

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
APPENDIX**

76-6063

United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 76-6063

UNITED STATES OF AMERICA,

Plaintiff-Appellant,

—v.—

ONE 1974 CADILLAC ELDORADO SEDAN, SERIAL
NO. 6L47S4Q407966,

Defendant-Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

APPENDIX FOR PLAINTIFF-APPELLANT

ROBERT B. FISKE, JR.,
United States Attorney
for the Southern District of New York
Attorney for Plaintiff-Appellant

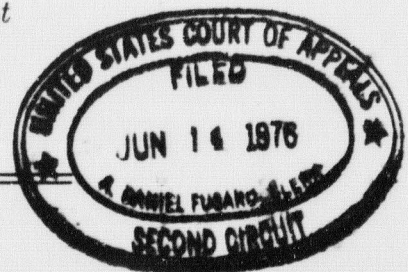


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CIVIL DOCKET
UNITED STATES DISTRICT COURT

A 1
Jury demand date:

JUDGE WEINFELD
Civ. 4508

Form No. 1-6 Rev.

TITLE OF CASE	ATTORNEYS
UNITED STATES OF AMERICA	For plaintiff: Paul J. Curran, US Attorney for the SDNY U.S. Courthouse - Foley Square, NY 10007 791-1959
v	
ONE 1974 CADILLAC ELDORADO SEDAN, SERIAL NO. 6L1784Q407966	
	4/5
	For defendant: Michael P. DiRenzo 15 Columbus Circle, NYC 10023- 541-7711

STATISTICAL RECORD	COSTS	DATE	NAME OR RECEIPT NO.	REC.	DISB.
mailed x	Clerk				
mailed ✓	Marshal				
of Action: Vehicle -	Docket fee				
ture (21 USC § 881)	Witness fees				
arose at:	Depositions				

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74 CIV. 451

DATE	PROCEEDINGS	Date Order Judgment
Oct. 15-74	Filed complaint and issued summons.	
Dec. 4-74	Filed warrant for arrest for article in rem with marshal's return with proof of publication.	
Dec. 23-74	Filed answer of deft.	
01-30-75	PRE-TRIAL CONFERENCE HELD BY <i>Mag. Guttel</i>	
01-10-75	PRE-TRIAL CONFERENCE HELD BY <i>Mag. Guttel</i>	
01-19-75	PRE-TRIAL CONFERENCE HELD BY <i>Mag. Guttel</i>	
01-28-75	Filed government's request for admissions.	
02-04-75	Filed Claimant admissions made pursuant to Government's request	mPD
02-10-75	PRE-TRIAL CONFERENCE HELD BY <i>Mag. Guttel</i>	
02-22-75	Filed affdvt. of Michael P. Dizenzo in support of an application for an continuance of this matter	
03-07-75	PRE-TRIAL CONFERENCE HELD BY <i>Mag. Guttel</i>	
03-08-75	Filed Consent pre-trial Order--Weinfeld, J.	
03-01-75	Non-Jury trial begun before: Weinfeld, J. and concluded, decision reserved	
03-30-75	Filed OPINION #43546...The decree of forfeiture is denied, and the car shall be released to the claimant. -- Weinfeld, J. m/n	
03-31-75	Filed pltf's proposed findings of fact and conclusions of law	
03-31-75	Filed deft's trial memorandum of law	
03-31-75	Filed pltf's trial memorandum of law	
04-20-76	Filed stip. and order that the court decision dated 1-30-75 denying forfeiture and direct that the deft. vehicle be released to the claimant is stayed pending determination by the pltf. whether to appeal that decision.	
03-04-76	Filed Order and Judgment that forfeiture is denied, the complaint is dismissed and the U.S. A. is directed to release the vehicle to the claimant, without prejudice to any claims that may be asserted against the vehicle by the Internal Revenue Service for taxes assessed against Ivan Santiago--Weinfeld, J. Judgment entered on 3-4-76. m/n	
03-09-76	Filed transcript of record of proceedings dated 12-1-76.	
04-05-76	Filed plaintiffs notice of appeal to the USCA for the 2nd Circuit from judgment denying forfeiture. - copy mailed to Michael P. Dizenzo, Esq.	

A TRUE COPY
RAYMOND F. BURKHARDT, Clerk

(b)

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

A

3

UNITED STATES OF AMERICA

Plaintiff

-v-

One 1974 Cadillac Eldorado
Defendant

CASE NO. 74 Civ 4508

JUDGE Weinfeld

CLERK'S CERTIFICATE.

I, RAYMOND F. BURGHARDT, Clerk of the District Court of the United States for the Southern District of New York, do hereby certify that the certified copy of docket entries lettered A- B, and the original filed papers numbered 1 thru 16, and exhibits _____, inclusive, constitute the record on appeal in the above entitled proceeding; except for the following missing documents:

DATE FILED

PROCEEDINGS

IN TESTIMONY WHEREOF, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, this 5th day of May, in the year of our Lord, One thousand nine hundred and seventysix, and of the Independence of the United States the 200th year.

Raymond F. Burghardt
Clerk of the Court

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x
:
UNITED STATES OF AMERICA,
:
Plaintiff,
:
-against-
:
ONE 1974 CADILLAC ELDORADO SEDAN,
SERIAL NO. 6L47S4Q407966,
:
Defendant. : #43646
----- x

OPINION

THOMAS J. CAHILL, ESQ.
United States Attorney for the
Southern District of New York
One St. Andrew's Plaza
New York, New York

Attorney for Plaintiff

PETER C. SALERNO, ESQ.
Assistant United States Attorney
Of Counsel

MICHAEL P. DIRENZO, ESQ.
15 Columbus Circle
New York, New York

Attorney for Claimant

FILED
U.S. DISTRICT COURT
DEC 30 4 36 PM '75
S.D. OF N.Y.

MICROFILM

DEC 31 1975

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EDWARD WHINFELD, D. J.

The government seized and seeks forfeiture of a Cadillac car pursuant to 21 U.S.C., section 881(a), which provides:

"The following shall be subject to forfeiture to the United States and no property right shall exist in them:

. . . .

(4) All conveyances, including aircraft, vehicles, or vessels, which are used, or are intended for use, to transport, or in any manner to facilitate the transportation, sale, receipt, possession, or concealment of [contraband]."

The owner of the seized car is Ivan Santiago, the claimant herein. On June 7, 1974, he drove the vehicle, in which also was seated Hiram "Pete" Montanez, to 305 East 24th Street, New York City, where one Arlene Carlton resided. They left the car and entered the apartment, where Santiago and Montanez discussed with Joseph P. Salvemini, an undercover agent, a sale of cocaine. They failed to agree on the mechanics of the proposed transaction and their negotiations terminated inconclusively. Both Santiago and Montanez then left the area by the

Cadillac car. Three days later, on June 10, Montanez alone met with Salvemini at a restaurant at Broadway and 92nd Street, New York City, where they agreed upon a sale of one-eighth kilogram of cocaine for \$4,000, and later that evening Montanez delivered the cocaine to Salvemini at the Carlton apartment. Santiago was not present on June 10 on either occasion, that is, when the sale of the one-eighth kilogram was negotiated or when it was delivered. The evidence does not establish that the Cadillac car transported Montanez to the place of negotiation or the place of delivery on June 10.

On June 11, 1974, Montanez and Salvemini again met at the restaurant at Broadway and 92nd Street, New York City, whereupon Montanez agreed to sell to the undercover agent a kilogram of cocaine. Santiago was not present. That evening, after leaving Santiago's apartment and while driving a car (not the Cadillac car here at issue) to meet Salvemini to consummate the sale of the kilogram of cocaine negotiated earlier that day, Montanez was arrested and the cocaine was found in the car he was driving. Later that evening Santiago was arrested. The following day, pursuant to a search warrant, his apartment

was searched and a quantity of cocaine, marijuana, narcotics equipment and \$26,629 in currency were confiscated. Later that day, June 12, 1974, Santiago's Cadillac car was seized. The sole reason for its seizure was its use five days earlier to transport Santiago and Montanez to the East 24th Street premises where the meeting had been held and the negotiations for the initial sale of cocaine had ended inconclusively.

Santiago was indicted, together with Montanez and Carlton, charged with conspiracy to distribute narcotics. Santiago pleaded guilty and acknowledged that he and others met at the Carlton apartment on June 7, 1974, and there negotiated for the sale of cocaine that (1) Montanez "made the next day." Thus the issue is whether the Cadillac car that transported Santiago and Montanez to the premises where they discussed a proposed sale of cocaine, which meeting was an overt act under the indictment, was a conveyance "used, or . . . intended for use, to transport, or in any manner to facilitate the transportation, sale, receipt, possession, or concealment of" the cocaine.

(1) The first sale was made on June 10, not June 8.

It is not contended that either Santiago or Montanez planned to make delivery of the cocaine at the premises on East 24th Street on June 7, the day they drove the car there to negotiate with the undercover agent. So, too, the government does not contend, nor do the facts support a claim that the car was used on that occasion to transport the illicit drugs or as a place to negotiate the sale or as a decoy or lookout vehicle in connection with the transaction. Its sole use was to transport Santiago and Montanez to the site of the area where the proposed purchase was first discussed.

The government contends that this use of the vehicle facilitated the subsequent sale within the meaning of the statute. However, where the contraband is not in the vehicle, what "constitutes 'facilitation' is a question of degree, which is in turn a question of fact not readily susceptible to generalization." (2) The mere fact that a vehicle is used as an ordinary means of transportation to convey one to the site of a crime does not necessarily mean that its use was to facilitate the illicit

(2) United States v. One Dodge Coupe, 43 F. Supp. 60, 61 (S.D.N.Y. 1942) (Rifkind, J.).

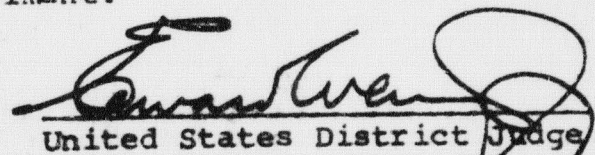
transaction so as to require forfeiture of the vehicle.

More must be shown. I agree with the conclusion of Judge Bownes, who recently explored the matter at length, that to be forfeited a vehicle must have some substantial connection to, or be instrumental in the commission of, the underlying activity which the statute seeks to prevent. (4)

In the instant case, other than a means of normal transportation of Santiago and Montanez to East 24th Street, the car had no relationship, direct or indirect, to the narcotics transaction which ^{were} consummated ~~five~~ ^{three and four} days thereafter. It had no more impact upon the contemplated transaction than if they had walked there, travelled there from outside the city by plane and landed at a heliport on East 23rd Street, or reached their destination by subway.

The decree of forfeiture is denied, and the car shall be released to the claimant.

Dated: New York, N. Y.
December 30, 1975


United States District Judge

(3) Cf. Simpson v. United States, 272 F.2d 229 (9th Cir. 1959); United States v. One 1952 Ford Victoria, 114 F. Supp. 458, 460 (N.D. Cal. 1953).

(4) United States v. One 1972 Datsun, 378 F. Supp. 1200 (D.N.H. 1974).

JUDGE WEINFELD

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

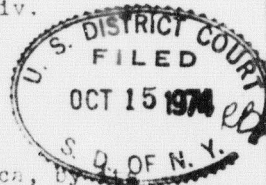
- v -

One 1974 Cadillac Eldorado Sedan, :
Serial No. 6L47S4Q407966, :

Defendant. :

74 CIV. 4508

VERIFIED COMPLAINT



Plaintiff, United States of America, by
attorney, Paul J. Curran, United States Attorney for the
Southern District of New York, for its complaint alleges
upon information and belief:

1. This is an action for forfeiture brought by
the United States of America pursuant to 21 U.S.C. §881.
2. This Court has jurisdiction pursuant to 28
U.S.C. §§1345 and 1355, and 21 U.S.C. §881.
3. The defendant in rem ("the vehicle") is a 1974
Cadillac Eldorado Sedan, Serial No. 6L47S4Q407966, bearing
New York registration 681 XJD, and registered to Ivan
Santiago, 92 Wadsworth Avenue, New York, New York.
4. On or about June 7, 1974, the vehicle was used
to facilitate the sale of a controlled substance, to wit, a
quantity of cocaine.
5. On or about June 11, 1974, the vehicle was
seized at Dick Gidrom Cadillac, Inc., 696 East Fordham Road,
Bronx, New York, by agents of the United States Drug Enforce-
ment Administration.
6. Following seizure, the vehicle was processed
and stored, and is presently stored, at the Drug Enforcement
Administration Garage, 55th Street and Eleventh Avenue,
New York, New York.

1

7. By reason of the foregoing, the vehicle is subject to forfeiture to the United States of America pursuant to 21 U.S.C. §881.

WHEREFORE, plaintiff United States of America respectfully requests that this Court issue a warrant for the arrest of the vehicle, that all persons having an interest in the vehicle be notified to appear herein and show cause why forfeiture should not be decreed, and that this Court decree forfeiture of the vehicle and its disposition pursuant to law, and award the plaintiff the costs and disbursements of this action.

Dated: New York, New York

October 11, 1974

PAUL J. CURRAN
United States Attorney for the
Southern District of New York
Attorney for Plaintiff

By: Peter C. Salerno
PETER C. SALERNO
Assistant United States Attorney
Office and Post Office Address:
United States Courthouse
Foley Square
New York, New York 10007
Telephone: (212) 791-1959

VERIFICATION

STATE OF NEW YORK)
COUNTY OF NEW YORK : ss.:
SOUTHERN DISTRICT OF NEW YORK)

PETER C. SALERNO being duly sworn,
deposes and says that he is an Assistant United States
Attorney for the Southern District of New York, and as
such has charge of the above entitled action; that he
has read the foregoing complaint

and knows the contents thereof, and
that the same is true of his own knowledge, except
as to those matters herein stated to be alleged on
information and belief and that as to those matters he
believes it to be true.

That the sources of deponent's information
and the grounds of his belief are official records and
files of the United States.

That the reason this verification is made by
deponent and not by plaintiff
is that the plaintiff
is a corporation sovereign.

Peter C. Salerno

PETER C. SALERNO
Assistant United States Attorney

Sworn to before me this

15th day of October, 1974

Joseph F. Lee

JOSEPH F. LEE
Notary Public, State of New York
No. 41 222638 Queens County
Term Expires March 30, 1975

A 13

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

[Handwritten signature]
C 73 12 48 PM '74
S.D. OF N.Y.

-----x
UNITED STATES OF AMERICA, :
Plaintiff, :

-v- :

One 1974 Cadillac Eldorado Sedan :
Serial No. 6L47S4Q407966; :
Defendant. :

ANSWER

74 Civ. 4508 (E.W.)

-----x
Defendant, by its attorney, Michael P. Direnzo,
as and for its answer to the complaint, sets forth and alleges
as follows:

1. Denies each and every allegation contained
in paragraph "4" of the complaint.

WHEREFORE, defendant demands judgment dismissing
the complaint together with the costs and disbursements of
this action.

Dated: New York, New York

December 23, 1974.

[Handwritten signature: Michael P. Direnzo]
MICHAEL P. DIRENZO
Attorney for Defendant
Office and P.O. Address
15 Columbus Circle
New York, New York 10023
541-7740-1

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x

UNITED STATES OF AMERICA, :

Plaintiff, :

-v- :

One 1974 CADILLAC ELDORADO SEDAN, :
Serial No. 6L47S4Q407966, :

Defendant. :

-----x

REQUEST FOR ADMISSIONS

74 Civ. 4508 (E.W.)

Plaintiff, the United States of America, hereby requests that claimant, Ivan Santiago, within 30 days of the service of this request, make the following admissions for the purpose of this action only and subject to all pertinent objections to admissibility which may be interposed at trial, pursuant to Rule 36 of the Federal Rules of Civil Procedure:

That each of the following statements is true:

1. On June 7, 1974, Ivan Santiago, operating the defendant vehicle, parked it in the vicinity of 305 East 24th Street, New York, New York.
2. Santiago and his passenger, Hiram "Pete" Montanez, left the defendant vehicle and proceeded to the apartment of Arlene Carlton, apartment #19D, 305 East 24th Street, New York, New York.
3. While in that apartment, Santiago agreed to sell 1 kilogram of cocaine to a person present in the apartment.
4. Thereafter, Santiago and Montanez left 305 East 24th Street, entered the defendant vehicle, and drove away.

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S.D. OF N.Y.
U.S. DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

5. Santiago did not reside at 305 East 24th Street on June 7, 1974, and had no proprietary interest in that apartment on that date.

Dated: New York, New York

July 25, 1975.

PAUL J. CURRAN
United States Attorney for the
Southern District of New York
Attorney for Plaintiff

By:

Peter C. Salerno

PETER C. SALERNO
Assistant United States Attorney
Office and Post Office Address:
United States Courthouse Annex
One St. Andrew's Plaza
New York, New York 10007
Telephone: (212) 791-1979

TO: MICHAEL P. DIRENZO, ESQ.
Attorney for Defendant
and Claimant
15 Columbus Circle
New York, New York 10023

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

UNITED STATES OF AMERICA,

Plaintiff,

-v-

One 1974 CADILLAC ELDORADO SEDAN,
Serial No. 6L47SQ407966,

Defendant.

-----X

Claimant, by MICHAEL P. DIRENZO, his
attorney, makes the following admissions for the purpose
of this action only and subject to all pertinent objections
to admissability which may be interposed at trial, pursuant
to Rule 36 of the Federal Rules of Civil Procedure.

Admits allegations and recitals marked "1",
"2", "4" and "5".

Denies allegation and recital marked "3".

Dated: New York, New York

September 3rd, 1975

Yours, etc.

Michael P. Drenzo
MICHAEL P. DIRENZO
Attorney for Claimant
Office and P.O. Address
15 Columbus Circle
New York, N.Y. 10023

TO: PAUL J. CURRAN
U.S. Attorney for
Southern District of New York
1 St. Andrew's Plaza
New York, New York 10007

74Cv4508 EW

FILED
U.S. DISTRICT COURT
SEP 4 2 13 PM '75
S.D. OF N.Y.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

: PRE-TRIAL ORDER

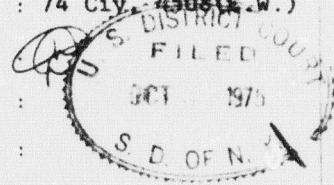
Plaintiff,

: 74 Civ. 4508 (E.W.)

- v -

ONE 1974 CADILLAC ELDORADO SEDAN,
Serial No. 6L47S4Q407966,

Defendant.



The Honorable Gerard L. Goettel, United States
Magistrate, having on September 10, 1975 directed the parties
to prepare a pre-trial order in this matter, it is hereby

Ordered, that the following shall constitute the
pre-trial order in this action:

I. Jurisdictional Statement

This Court's jurisdiction of this action is pre-
dictated upon 21 U.S.C. § 881 and 28 U.S.C. §§ 1345 and 1355.

II. Undisputed Facts

The parties agree that the following facts are not
in dispute in this action:

1. The registered owner of the defendant in rem
("the vehicle") is Ivan Santiago, the claimant in this
action.

2. On or about June 11, 1974, the vehicle was
seized in Bronx County, New York by agents of the United
States Drug Enforcement Administration.

3. Following seizure, the vehicle was processed
and stored at the Drug Enforcement Administration Garage,
55th Street and Eleventh Avenue, New York, New York.

4. On June 7, 1974, at about 5:00 P.M., Ivan
Santiago, operating the defendant vehicle, parked it in the
vicinity of 305 East 24th Street, New York, New York.

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5. Santiago and his passenger, Hiram "Pete" Montanez, left the defendant vehicle and proceeded to the apartment of Arlene Carlton, apartment #19D, 305 East 24th Street, New York, New York.

6. Thereafter, Santiago and Montanez left 305 East 24th Street, entered the defendant vehicle, and drove away.

7. The visit described in paragraphs 4 through 6 above was the only occasion on which Santiago visited 305 East 24th Street on June 7, 1974.

8. Santiago did not reside at 305 East 24th Street on June 7, 1974 and had no proprietary interest in that apartment on that date.

9. On May 12, 1975 Ivan Santiago pleaded guilty to Count I of Indictment No. 74 Cr. 623, before the Honorable Constance Baker Motley, United States District Judge, Southern District of New York. That count charged Santiago, Montanez, and Arlene Carlton with conspiracy to distribute narcotics. One of the overt acts charged in that count reads as follows: "On or about June 7, 1974 the defendants Arlene Carlton, Hiram Montanez and Ivan Santiago had a conversation."

10. At the time he pleaded guilty, Mr. Santiago was asked the following question in open Court by Assistant United States Attorney Paul Vizcarrondo:

"I would ask him if he agreed with Hiram Montanez to sell cocaine to certain individuals, whether he met with Hiram Montanez and other individuals in Arlene Carlton's apartment on about June 7, 1974, and there negotiated for sale of cocaine that Hiram Montanez eventually made the next day."

Q [By the Court]: Did you hear the statement of the United States Attorney?

A [Mr. Santiago]: Yes, your Honor.

Q Do you agree with that statement?

A Yes, your Honor.

Q That you agreed with Montanez to sell
a Quantity of cocaine and you met with him?

A Yes, your Honor." (Tr. 11-12)

III. Factual Contentions

A. Plaintiff's contentions

1. At a meeting in Arlene Carlton's apartment on June 7, 1974, to which Santiago had driven in the defendant vehicle, Santiago had a general discussion with others, including an undercover agent, with respect to the sale to the agent of large quantities of cocaine. Santiago also agreed to sell the agent one kilogram of cocaine for \$26,000. There was general discussion as to the method for concluding the transaction, though no agreement was arrived at.

B. Claimant's contentions

1. Claimant denies that he agreed to sell any narcotics during a visit to Arlene Carlton's apartment on June 7, 1974.

IV. List of Witnesses

A. For plaintiff: Joseph P. Salvemini, Special Agent, United States Drug Enforcement Administration.

B. For Claimant: Ivan Santiago, Claimant.
Hiram Pete Montanez

V. Exhibits

A. Plaintiff's Exhibits:

1. Transcript of plea proceeding before the Honorable Constance Baker Motley, May 12, 1975.

B. Claimant's Exhibits: None.

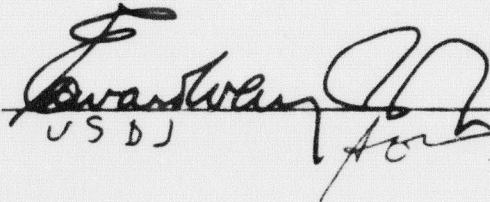
VI. Issue to be tried

The only issue to be tried in this action is whether Santiago's use of the defendant vehicle to drive to and from Arlene Carlton's apartment on June 7, 1974,

considering what transpired there, constituted facilitation of the sale of a controlled substance within the meaning of 21 U.S.C. § 881(a)(4).

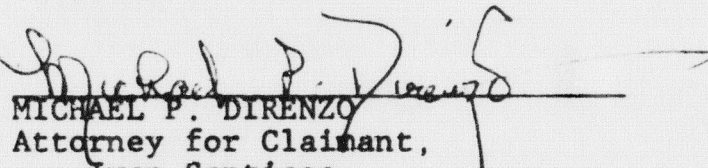
Dated: New York, New York
OCT. 10 1975

SO ORDERED: 10/7/75


US DJ

Consented to: PAUL J. CURRAN
United States Attorney for the
Southern District of New York
Attorney for Plaintiff

By: 
PETER C. SALERNO
Assistant United States Attorney
791-1979


MICHAEL P. DIRENZO
Attorney for Claimant,
Ivan Santiago
15 Columbus Circle
New York, New York 10023

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DEC 31 1975

UNITED STATES OF AMERICA

Plaintiff's

S. D. N. Y.
Plaintiff

: Findings of Fact
: and Conclusions
: of Law

- v -

ONE 1974 CADILLAC ELDORADO SEDAN,
SERIAL NO. 6L47S4Q407966,

: 74 Civ. 4508 (E.W.)

Defendant.

Plaintiff, by its attorney, Thomas J. Cahill,
United States Attorney for the Southern District of New York,
submits the following proposed findings of fact and conclu-
sions of law:

Findings of Fact

1. On Thursday, June 6, 1974, Joseph P. Salvemini,
a Special Agent of the United States Drug Enforcement
Administration, acting in an undercover capacity, was intro-
duced by Arlene Carlton to Hiram "Pete" Montanez at Carlton's
apartment, no. 19D, 305 East 24th Street, New York, New York.

2. Agent Salvemini wished to purchase drugs, and
specifically cocaine, as part of a criminal investigation.
He and Montanez discussed the possibility of Montanez'
selling cocaine to Salvemini, but Salvemini became angry
when Montanez refused to discuss amounts larger than one-
eighth of a kilogram.

3. Another meeting occurred on Friday, June 7,
1974, this time between Agent Salvemini, an informant,
Montanez and Montanez' cousin, Ivan Santiago. At about
4:45 P.M., Agent Salvemini and the informant arrived at
Arlene Carlton's apartment. At about 5:00 P.M. Montanez
and Santiago arrived. Santiago was driving the defendant
vehicle, and Montanez was his passenger. Santiago is also
the registered owner of the defendant vehicle.

(9)

4. A lengthy discussion ensued, principally between Salvemini and Santiago, during which the two attempted to establish a business relationship to deal in cocaine. Santiago was the principal negotiator on the seller's side, and held himself out as the principal supplier and person in charge of the operation as well. Santiago was then prepared to sell Salvemini a kilogram of cocaine for \$26,000, and stated that he was prepared to sell substantially more as soon as an anticipated shipment of some 50 kilograms arrived. Santiago and Salvemini were not, however, then able to agree on the mechanics of concluding the transaction, and the meeting broke up at about 5:25 P.M., inconclusively on that point. Santiago and Montanez left the area in the defendant vehicle.

5. As a result of the aforementioned meeting, Salvemini met with Montanez at a restaurant called the Library, at Broadway and 92nd Street, New York, New York, on Monday, June 10, 1974, and after some discussion, agreed to purchase one-eighth of a kilogram of cocaine for \$4,000. That evening, at Carlton's apartment, Montanez delivered the cocaine to Salvemini.

6. The next day, June 11, 1974, Montanez and Salvemini again met at the Library and Montanez agreed to sell Salvemini a kilogram of cocaine. In the evening of that day, Montanez left Santiago's apartment at 675 Walton Avenue, Bronx, New York, entered an automobile, and began driving downtown to consummate the sale to Salvemini. On the way, Montanez was arrested and a kilogram of cocaine was found in the car he was driving.

7. Later that evening, Santiago was arrested in front of his apartment building. The following day, pursuant to a search warrant, his apartment was searched and

the following items were found:

1. 307 grams (gross weight) of cocaine in a clear plastic bag.
2. 38 grams (gross weight) of marihuana in a clear plastic bag.
3. 28.4 grams (gross weight) of cocaine wrapped in a one dollar bill.
4. 29.5 grams (gross weight) of cocaine contained in tin foil.
5. A quantity of cocaine in a large spoon.
6. A triple beam balance scale.
7. An electronic calculator.
8. Some handi-wrap bags.
9. \$2500 in \$100 bills, representing Official Advance Funds.
10. \$23,999 in bills.
11. *8129.98*
12. 896.5 grams (gross weight) of cocaine contained in two plastic bags inside a brown paper bag.
13. Two false-bottomed suitcases containing cocaine residue.
14. Eleven .38 caliber bullets.

8. The defendant vehicle was seized by Agent Salvemini at Dick Gidrom Cadillac, Inc., 696 East Fordham Road, Bronx, New York on June 12, 1974, because of its use in transporting Santiago and Montanez to the June 7 meeting. The vehicle was transported to the DEA garage in Manhattan.

9. Santiago was subsequently indicted, and on May 12, 1975 he pleaded guilty to one count of conspiracy

to traffic in cocaine. The June 7, 1974 meeting in Carlton's apartment, to which Santiago drove the defendant vehicle, was set forth in the indictment as an overt act in furtherance of the conspiracy.

10. The June 7, 1974 meeting in Carlton's apartment, and the use of the defendant vehicle to transport Santiago and Montanez to it was intended by Santiago and Montanez to further their narcotics trafficking business, and the use of the vehicle thereby facilitated the sale of a controlled substance within the meaning of 21 U.S.C. § 881.

Conclusions of Law

1. This Court has jurisdiction of this action pursuant to 28 U.S.C. §§1345, 1355 and 21 U.S.C. § 881.

2. Venue is properly in the Southern District of New York by virtue of the defendant vehicle's seizure and storage within this District.

3. At the time the vehicle was seized, the seizing agents had probable cause to believe that the vehicle had been used to facilitate the sale of a controlled substance in violation of 21 U.S.C. §881(a)(4).

4. Santiago's use of defendant vehicle to transport himself and Montanez to Carlton's apartment on June 7, 1974, where negotiations took place regarding the sale of substantial quantities of cocaine, constituted facilitation of the sale of a controlled substance, to wit, cocaine.

sr
7

5. By reason of the foregoing, the defendant vehicle is subject to forfeiture to the United States pursuant to 21 U.S.C. 881(a)(4).

Dated: New York, New York

November 20, 1975

THOMAS J. CAHILL
United States Attorney for the
Southern District of New York
Attorney for Plaintiff

By: Peter C. Salerno
PETER C. SALERNO
Assistant United States Attorney
United States Courthouse Annex
One St. Andrew's Plaza
New York, New York 10007
Telephone: (212) 791-1979

TO: MICHAEL P. DIRENZO, ESQ.
Attorney for Claimant Ivan Santiago
15 Columbus Circle
New York, New York 10023

~~So ORDERED: 11/24/75~~

~~U.S.D.J.~~

PCS:emw
74-2558
d-114

A 26

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MAR 4 1976

S. D. OF N. Y.

UNITED STATES OF AMERICA,

Plaintiff,

ORDER & JUDGMENT

-v-

74 Civ. 4508 (EW)

ONE 1974 CADILLAC ELDORADO SEDAN,
SERIAL NO. 6L47S4Q407966,

Defendant.

The verified complaint in this action having been filed on October 15, 1974, demanding forfeiture of the defendant vehicle to the United States of America on the ground that it was allegedly used to facilitate the sale of a controlled substance in violation of 21 U.S.C. § 881, and Ivan Santiago, the registered owner of the vehicle, having filed an answer denying the material allegations of the complaint and demanding judgment dismissing the complaint, and this action having come to trial before this Court on December 1, 1975, and this Court having filed its opinion on December 30, 1975, denying the requested decree of forfeiture and determining that the defendant vehicle should be released to Ivan Santiago, the claimant, it is hereby

ORDERED, ADJUDGED, AND DECREED that forfeiture is denied, the complaint is dismissed, and the United States of America is directed to release the vehicle to the claimant, without prejudice to any claims that may be asserted against the vehicle by the Internal Revenue Service for taxes assessed against Ivan Santiago.

Dated: New York, New York

March 4, 1976

E. J. Swartz
United States District Judge

Judgment entered this 4th
day of March, 1976.

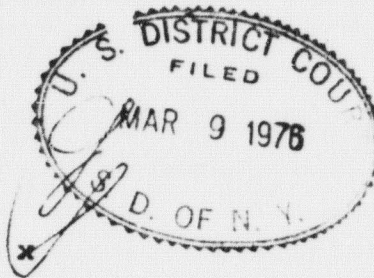
Raymond H. Burghardt
Clerk

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V A 27

lh:mg

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



UNITED STATES OF AMERICA

:

v.

:

74 Civil 4508

ONE 1974 CADILLAC ELDORADO
SEDAN s/n 6L47S4Q407966,

:

:

Defendant.

-x

B e f o r e :

HON. EDWARD WEINFELD,

District Judge

New York, New York

December 1, 1975

10:15 a.m.

APPEARANCES:

THOMAS J. CAHILL, Esq.,

United States Attorney

Southern District of New York

PETER C. SALERNO, Esq.,

Assistant United States Attorney

MICHAEL P. Di RENZO, Esq.,

Attorney for Defendant

14

(Case called)

THE CLERK: Is the plaintiff ready?

MR. SALERNO: The Government is ready.

THE CLERK: Defendant ready?

MR. DiRENZO: Ready.

THE COURT: Who represents the Government?

MR. SALERNO: May it please the Court --

THE COURT: On page 4 of your brief, that can't be a correct date, is it?

MR. SALERNO: The date is a typographical error.

THE COURT: Why don't you correct your typographical errors before you submit them?

MR. SALERNO: I am sorry, I didn't catch that one. I only noticed it on Friday.

THE COURT: What is the day?

MR. SALERNO: It should be June 5.

THE COURT: Why didn't you submit a copy -- the rules require you to submit the pleadings.

MR. SALERNO: Our Clerk's Office, your Honor, submitted two copies of the marked pleadings to your Honor's chambers last Monday.

THE COURT: All you submitted was the complaint without the defendant's answer.

2 Where is a copy of the defendant's answer?

3 MR. SALERNO: I didn't submit the defendant's
4 answer, your Honor. I am sorry. I understood that that
5 would be the defendant's obligation to submit a marked
6 answer.

7 THE COURT: Then you have not followed the rules.
8 I think you ought to to learn the rules. The plaintiff is
9 the one supposed to submit marked pleadings. That includes
10 all pleadings, even though of the opposing side.

11 MR. SALERNO: I am sorry, your Honor. I consulted
12 my office and I got the impression from my people who told
13 me that it was only the marked complaint that was necessary.

14 THE COURT: Where is your brief?

15 MR. DiRENZO: I just submitted it.

16 THE COURT: That's your brief?

17 MR. DiRENZO: My memorandum of law, your Honor.

18 THE COURT: Where is your memorandum of law?

19 MR. DiRENZO: I just submitted it to your Honor.
20 It is before your Honor now.

21 THE COURT: This is the plaintiff's trial mem-
22 orandum.

23 MR. DiRENZO: Trial memorandum.

24 THE COURT: I don't see any defendant's --

25 MR. DiRENZO: May I see it, please? I am sorry,

2 I gave you the wrong one by mistake.

3 THE COURT: You are supposed to get that in in
4 advance, you know, Mr. DiRenzo.

5 MR. DiRENZO: I worked on it through Wednesday
6 night, but Thursday being a holiday--I understand you were
7 not working on Friday--I submitted it today.

8 THE COURT: All right.

9 Are you ready to proceed?

10 MR. SALERNO: Your Honor, there is one other
11 typographical error I just found out, also on Friday, in our
12 proposed findings and conclusions. It is a small point --
13 that in the middle of page 3, in the list of items found
14 as a result of a search, there should be an item 11 between
15 between items 10 and 12, \$129.98 in coins. That would
16 be item 11 of the list of things found in the search.

17 Your Honor, will it be necessary to have open-
18 ing statements in this matter?

19 THE COURT: I have read your brief.

20 MR. SALERNO: At the outset--

21 THE COURT: Do you want to make an opening state-
22 ment?

23 MR. DiRENZO: I am satisfied to make an open-
24 ing statement, either way.

25 THE COURT: I have gone over the briefs, at

2 least the Government's brief, and I suppose you rely on
3 other cases, particularly the case up in, where is it,
4 Maine?

5 MR. DiRENZO: There are several cases, your
6 Honor. Basically our contention is that the automobile
7 was not used by prearrangement, and, secondly, that the ve-
8 hicle itself was merely used for the accommodation or con-
9 venience of the defendant or the claimant, as we would call
10 him here, in going to premises 324, I think it is, East 34th
11 Street.

12 The entire meeting at that place took approxi-
13 mately 20 or 25 minutes.

14 The automobile that was used by the defendant
15 was merely used at that time because the vehicle of a co-
16 defendant in that case had already been parked, and the de-
17 fendant had not intended to meet the co-defendant on that
18 particular date.

19 When he came there, there was no parking facility,
20 and he parked his vehicle near the store that he was then
21 occupying. It was at that point that the co-defendant
22 advised him that they were going to this particular place.
23 It was under those circumstances that he took the vehicle.

24 Secondly, additionally, we maintain that at the
25 particular meeting which I believe is June 7, where he met --

2 the defendant met with the special agent, that no agreement
3 among the parties had been reached. As a matter of fact,
4 I think some of the Government's exhibits will establish
5 that there was no meeting of the minds at that point and
6 the defendant in words or substance said, "Either the deal
7 is off" or "You do it my way or we do nothing at all."

8 Some days later a sale is consummated with a co-
9 defendant.

10 The only instance in which any reference is made
11 to the vehicle is the reference to the date on which they
12 went to the premises of a co-conspirator and a co-defendant
13 where a meeting took place among the agent, the defendant
14 Montanez, and the defendant Santiago.

15 We claim that under those circumstances the facili-
16 tation was, (1) a necessary ingredient that would come with-
17 in the purview of the statute, making facilitation the type
18 of facilitation that was contemplated by Congress in the
19 enactment of this particular statute.

20 I have pointed out in my memorandum that in the
21 cases that the Government relies upon, primarily the one
22 decided by Judge Rifkind back a number of years ago, and
23 in the cases decided by Judge Libell, that they go out of
24 their way to go to the dictionary and to obtain a true
25 meaning of the word "facilitate."

2 I know your Honor is familiar with all of the
3 translations given there, to make it a little easier for a
4 defendant. But there is one thing that they seem to over-
5 look.

6 As I read the statute, and I read the word "facili-
7 tate" --

8 THE COURT: You know, this is supposed to be an
9 opening statement. You are arguing the law, aren't you?

10 MR. DiRENZO: I am sorry, your Honor.

11 THE COURT: As long as you got into it, you say
12 that no agreement was reached on June 7.

13 How do you answer the Government's position that
14 the defendant himself, when he pled guilty, he was asked:
15 "I would ask him if he agreed with Hiram Montanez to sell
16 cocaine to certain individuals, whether he met with Hiram
17 Montanez and other individuals in Arlene Carlton's apartment
18 on or about June 7, and then negotiated for a sale of co-
19 caine that Hiram Montanez eventually made the next day."

20 The next day is wrong, in any event. That is
21 clear. The sale didn't take place until three days later,
22 isn't that correct?

23 MR. SALERNO: That is correct, your Honor.

24 MR. DiRENZO: My answer to that question is
25 very simple, your Honor.

1
2 THE COURT: What's the simple answer?

3 MR. DiRENZO: I don't know whether the Court is
4 going to like to hear it, but the fact of the matter is
5 that he was pleading guilty to a conspiracy, and your Honor
6 well knows that if he didn't make an affirmative answer to
7 the questions that were put to him by the United States At-
8 torneys, which questions would definitely anticipate an af-
9 firmative answer, as well as the questions that were put by
10 the Court, the Court never would have accepted the plea.
11 It was convenient under those circumstances.

12 We run into this problem every day in the week.
13 Of course, we don't find it too often in the federal courts
14 because there is not as much-- there hasn't been up to this
15 point too many bargaining pleas and the Court and the United
16 States Attorney or the prosecuting attorney wants to make
17 sure that there will not be a 2255 application subsequently
18 or there won't be a coram nobis proceeding in the state
19 court.

20 If you look at one of the Government's exhibits,
21 in his own memo, when he refers to the date on which this
22 vehicle was used--

23 THE COURT: He states there was an inconclusive
24 negotiation.

25 MR. DiRENZO: That is somewhat meaningful to me.

2 That is much more consistent with the version
3 given by the defendant than his own plea. The fact of
4 the matter is it was inconclusive by the Government's own
5 statement and by their own reports which we received in con-
6 nection with the suppression hearing. Even then there
7 was mention that the deal was inconclusive on the negotia-
8 tions at that point.

9 The answer we can give, and it is a truthful an-
10 swer, as far as I am concerned, the defendant was told
11 beforehand that unless he gave the answers that he gave, the
12 Court would not accept the plea. It is that simple.

13 THE COURT: You are not taking the position, though,
14 that he wasn't guilty of the conspiracy?

15 MR. DIRENZO: I am not taking that position.

16 THE COURT: You are referring specifically to
17 that item as an overt act. Does the Government want to be
18 heard at this point?

19 MR. SALERNO: No, your Honor, except to say that
20 the evidence we think will prove that the inconclusiveness
21 was solely on the method of transferring the drugs and the
22 transfer of the drugs. I think that's what our papers
23 say.

24 We claim the claimant in this transaction was
25 ready and willing to do business right there and the --

1 lh:mg

Salvemini-direct

10

2 THE COURT: All right, you both have made state-
3 ments. The statements of the lawyers are not evidence.

4 Let's take evidence.

5 MR. SALERNO: First I'd like to produce a
6 certified copy of the indictment in this matter and the
7 judgment of conviction.

8 Plaintiff's Exhibit 1 is the indictment of
9 Santiago and Plaintiff's Exhibit 2 is the judgment of con-
10 viction.

11 MR. DIRENZO: No objection.

12 (Plaintiff's Exhibits 1 and 2 received in
13 evidence)

14 MR. SALERNO: The Government calls Joseph P.
15 Salvemini.

16 J O S E P H P. S A L V E M I N I, called as a
17 witness by the Government, being first duly sworn,
18 testified as follows:

19 DIRECT EXAMINATION

20 BY MR. SALERNO:

21 Q Mr. Salvemini, how are you employed?

22 A I am employed by the United States Department of
23 Justice as a group supervisor for the New York Joint Task
24 Force.

25 Q Joint Task Force of what agency?

1 lh:mg

Salvemini-direct

11

2 A Drug Enforcement Administration.

3 Q How long have you been with the Drug Enforcement
4 Administration?

5 A Approximately seven and a half years.

6 Q How long have you been a group supervisor?

7 A Approximately a year and a half.

8 Q Do you know Ivan Santiago, the claimant in this
9 transaction?

10 A Yes, sir, I do.

11 Q Do you see him in this courtroom?

12 A Yes.

13 Q Will you point him out, please?

14 MR. DiRENZO: We will concede that he identifies
15 the claimant.

16 Q When did you first meet Mr. Santiago?

17 A I met him on the afternoon of June 7, about five
18 o'clock in the afternoon, 1974.

19 Q Where did you meet him?

20 A I met him in Apartment 19D at I think it was 304
21 East 24th Street in the Borough of Manhattan.22 Q Do you know who owned that apartment or lived
23 there?24 A Yes, that was the residence of an individual by
25 the name of Arlene Carlton.

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Salvemini-direct

12

1 Q Would you state the time of day that you met
2 Mr. Santiago on that day?

3 A I think it was approximately 4:45, 5:00 o'clock,
4 around there.

5 Q Would you describe the circumstances leading up
6 to that event?

7 A Yes, sir. I had been negotiating with Arlene
8 Carlton for a while relative to some purchases of methampheta-
9 mine and some purchase of cocaine.

10 On the day before that, about 1:30 in the after-
11 noon, she introduced me to an individual by the name of
12 Pete, whom we subsequently identified as Hiram Montanez.

13 Mr. Montanez and I met in Arlene Carlton's apart-
14 ment and we negotiated for my purchasing a quantity of
15 cocaine.

16 MR. DiRENZO: Objection, if your Honor pleases.

17 THE COURT: On what ground do you object?

18 MR. DiRENZO: The reason for the objection, sure-
19 ly it is a conclusion. He says he negotiated. We don't
20 know what he means--

21 THE COURT: State what was said on that occasion.

22 THE WITNESS: Arlene Carlton--

23 MR. DiRENZO: Of course I ask that it be taken
24 subject to connection.
25

lh:mg

Salvemini-direct

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1
2 THE WITNESS: Arlene Carlton introduced me to
3 Hiram Montanez as Pete. She introduced me to him as Joe.

4 I said I understood he had some cocaine to sell,
5 and he said, "Yes," that he and his cousin Ivan had brought
6 15 kilos of cocaine in from South America and that they had
7 about three kilograms left.

8 At that time he told me he would sell me an eighth
9 of a kilogram of cocaine.

10 I told him that he sounded like a rip-off artist,
11 that I thought he was bull-shitting, because nobody who
12 brought 15 kilos of cocaine in would be dealing in an eighth
13 of a kilo.

14 He told me that the reason he and his cousin
15 were only interested in selling an eighth was that they
16 only had three kilos left and they had a lot of other
17 customers they still had to take care of, and the reason
18 the quantity was so small for myself was that I was a rela-
19 tively new customer.

20 This trend of conversation continued back and
21 forth and got quite heated. In fact, it became an argu-
22 ment, and I told him I thought he was trying to rip me off
23 and he better come up with a better story than that.

24 Eventually I told Arlene Carlton to throw the
25 guy out of the door, and she showed him out.

lh:mg

Salvemini-direct

14

1 We prearranged something with Jerry Gile who was
2 with me and he went down with Montanez into the street in
3 order for the surveillance agents to identify him because
4 up to that point we didn't know who he was.

5 Q Could you state for the record what date this
6 was?

7 A June 6, 1974.

8 Q What happened then?

9 A After some additional conversation with Arlene
10 Carlton --Montanez and Jerry Gile had left the apartment--Jerry
11 Gile came back up to the apartment - I had some additional
12 conversation with Arlene Carlton during which I discussed
13 what had just taken place and she told me that --

14 THE COURT: Wasn't she present when you had the
15 conversation?

16 THE WITNESS: Yes. 'I am talking about subsequent
17 to Mr. Montanez leaving the apartment. I had an additional
18 conversation with Arlene Carlton relative to the circum-
19 stances.

20 MR. DiRENZO: That's objected to, if your Honor
21 please.

22 THE COURT: Taken subject to connection.

23 THE WITNESS: She told me to do whatever I felt
24 was best as far as the situation was concerned, she couldn't
25

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Salvemini-direct

15

2 vouch for the guy that had just been up in the apartment at
3 all, and ultimately Jerry Gile and myself left the apart-
4 ment.

5 Q What happened then?

6 A We returned the next day, approximately a quarter
7 to five in the evening, myself and Jerry Gile, and at about
8 ten minutes later, or so, 15 minutes later, Pete, Hiram
9 Montanez, arrived with Ivan Santiago, and he introduced--
10 no one there apparently had ever met Ivan Santiago before --
11 I know I had not, and he introduced Ivan Santiago around to
12 the rest of us.

13 Q Will you tell the Court what prompted you to go
14 back to the apartment --

15 A I received a phone call from Jerry Gile stating
16 that he had been in touch with Hiram Montanez and that a
17 meeting had been set up for that afternoon.

18 MR. DiRENZO: This is also taken subject to connec-
19 tion.

20 THE COURT: Subject to connection.

21 Q Then will you describe what you did on the 7th
22 after you went to Arlene Carlton's apartment and what hap-
23 pened there?

24 A Yes. I guess we were there about 15 minutes
25 during which I had some conversation with Arlene Carlton and

lh:mg

Salvemini-direct

16

she stated again for me to do whatever I felt was best in situation.

Mr. Montanez and Mr. Santiago arrived. At that time, Pete, Hiram Montanez, introduced me to Ivan Santiago. He introduced him as his cousin Ivan, and he introduced me as Joe to him.

We sat down in the living room and had a conversation. At that time Ivan Santiago told me that he was there to straighten out the disagreement between myself and Pete, and at that time I voiced my objections to doing only an eighth of a kilogram.

I told him that I didn't deal in eighths, that it was too small a quantity.

At that time he stated that he would deal me a kilogram of cocaine, and he set the price at \$26,000.

We then entered into a discussion about how the transaction was going to go down. I wanted it to go down using two rented cars, to put the money in one rented car and for him to put the cocaine, the kilo of cocaine, in the other rented car, and he vehemently objected to that.

He told me that he had been dealing in cocaine for six years and that in his experience it has to be a natural thing.

I remember specifically he said, "I might walk up

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Salvemini-direct

17

2 to you in front of a whole crowd of people at Christmas
3 time with a Christmas package in my hand and there will
4 be a kilo of cocaine in it, people will be all around and
5 no one will know what's going on."

6 He reiterated the conversation I had with Pete
7 the night before, the day before. He told me that he had
8 brought in 15 kilos and they were going back for 50 kilos of
9 cocaine in about a month.

10 He told me once the 50 kilos of ~~cocaine~~ came back
11 into the country, there would be no problem in my obtaining
12 any quantity that I wanted but for the time being I would
13 have to be satisfied with just that one kilo of cocaine.

14 The discussion then turned to people that I knew
15 and people that he knew, and most of this conversation, 95%
16 of it, was between myself and Mr. Santiago, except for this
17 point when Hiram Montanez interjected and said, "I want
18 you to understand what's going on here. The reason he is
19 asking you these questions is because he is trying to find
20 somebody that the two of you know, or a place that the two
21 of you hang out together at, in order to verify your story
22 that you are who you say you are and he is who he says he
23 is."

24 The conversation continued and he stated that the
25 only acceptable method of doing the transaction would be to

lh:mg

Salvemini-direct

18

do it indoors. He wasn't particular about where indoors, it just had to be done indoors.

Ultimately he asked Arlene Carlton if it would be acceptable that we utilize her apartment to conduct the transaction, and she said she didn't object to it.

After some additional discussion along these lines, we agreed -- they agreed, Ivan Santiago and Hiram Montanez agreed to consider my proposal for doing the kilogram deal in two rented cars, and I agreed to consider their proposal as far as doing it indoors, and we agreed to be back in touch at a later date.

Q Did either Ivan or Pete at that time say anything in substance and effect like "No deal" or "There is no deal" or "Forget about it"?

A Absolutely not. The only question that remained to be decided, the price had been decided, the quantity of the kilogram had been decided -- the only question that remained to be decided was whether we would do it my way utilizing two rented cars, whether we would do it their way, in an apartment, Arlene Carlton's apartment.

Q Do you recall the time that Ivan and Pete left?

A I would say it was about a half an hour after they arrived, which would probably be about maybe 25 minutes after five in the afternoon.

1 lh:mg

Salvamini-direct

19

2 Q Do you recall whether Ivan and Pete left the
3 apartment separately or together?

4 A Yes, I am absolutely sure they left together.
5 We shook hands all around, the two of them got up and left
6 together. I recall remaining in the apartment a short
7 time with Jerry Gile and Arlene Carlton alone.

8 Q During this conversation did you speak more with
9 one person than with another person?

10 A Yes, sir, absolutely. I would say almost ex-
11 clusively the conversation was with Ivan Santiago.

12 Q What happened after Ivan and Pete left the June 7th
13 meeting?

14 A I had a conversation with Jerry Gile that Satur-
15 day -that was a Friday afternoon we are talking about -
16 I had a conversation with Jerry Gile that Saturday, and
17 I instructed him to arrange for a meeting at The Library
18 Restaurant on Broadway and I believe 94th Street for that
19 Monday, around noon.

20 Q Then what happened?

21 A Subsequently, that Monday, which was June 10,
22 1974, I went to The Library at around twelve noon and a
23 few minutes after Jerry Gile and I got there, Hiram Montanez
24 arrived.

25 MR.DIRENZO: This is objected to, if your

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Salvemini-direct

20

2 Honor please, on the basis of the objection that is predi-
3 cated on the fact that the only meeting, as I understand
4 it, relative to this forfeiture proceeding, is the key date
5 June 7, 1974.

6 I think it is beyond the purview of the complaint.

7 THE COURT: I will take it for the purpose of
8 permitting the Government to establish whether or not the
9 claimant Ivan Santiago was engaged in a conspiracy with the
10 other named persons to effect a narcotics transaction in
11 violation of the law.

12 Q Would you describe what happened at that meeting,
13 please?

14 A Yes, sir. I had a conversation with Hiram
15 Montanez in which he told me that he had been in further
16 discussion with his cousin Ivan and that he and his cousin
17 Ivan were both still adamant about not wanting to conduct
18 the transaction out in the street, that it had to be done
19 indoors.

20 He gave me another counterproposal. He said that
21 he would have his girl friend Cathy give the package of
22 cocaine, the kilo of cocaine, to my girl friend in a ladies'
23 room, and I would be sitting with him in a theatre, and that
24 I would give him only half the money and that I could come
25 come back the next day if I liked the cocaine and pay him the

lh:mg

Salvemini-direct

21

other half of the money.

I decided after some additional discussion that there was no way I was going to convince him to do it out in the street, so I previously received permission from my supervisors to purchase an eighth of cocaine.

I proposed that to Hiram Montanez. I said, "Look, as I see it, the problem between us is that I don't trust you and you don't trust me. Why don't we do what you said at first? Let's do a quick eighth tonight; if it goes down, OK, I will take a kilogram from you tomorrow."

He said, "Look, it is up to you. If you want the kilo tonight, you take the kilo tonight. It's no problem. If you want the eighth, take the eighth. It is completely up to you."

I agreed to purchase an eighth of cocaine that night at approximately eight o'clock in the evening.

Jerry Gile went and called Arlene Carlton and advised her that in fact her apartment would be utilized for the transaction and Hiram Montanez left the area and I left the area.

We met again that night at approximately 20 minutes to eight in front of Arlene Carlton's apartment. At that time he had a blue tennis racket cover, a tennis racket with blue cover and a can of tennis balls in his

1 hand. We went upstairs, myself, Jerry Gile was with me
2 when we met, myself, Jerry Gile and Hiram Montanez.
3

4 We went up to Carlton's apartment and when we got
5 up to Arlene's apartment, the defendant took the cocaine,
6 it was an eighth of a kilogram of white powder--

7 MR. DiRENZO: When you say "the defendant" --

8 THE WITNESS: I am sorry, Hiram Montanez.

9 A (continuing) -- took an eighth of a kilogram of
10 cocaine out of the tennis racket cover. He gave it to me.
11 I checked the cocaine out up in the apartment and I paid
12 him \$4,000 in Government funds.

13 This was a price that had previously been arranged
14 at The Library.

15 I then told him that I would meet him at the same
16 time at The Library the next day in order to discuss the
17 purchase of a kilogram, if everything was OK with the
18 eighth that I had purchased.

19 I left the apartment at approximately I guess
20 five minutes after eight that night.

21 Q Did you do anything the next day?

22 A Yes, I went back to The Library at twelve noon and
23 I met with Hiram Montanez. At that time I told him that
24 I would take the kilogram of cocaine; again the insistence
25 was that it be done in the apartment.

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Salvemini-direct

23

2 I agreed to this transaction and that was es-
3 sentially it.

4 He reiterated the fact that he and Ivan were
5 going back very shortly to South America for approximately
6 50 kilos of cocaine and that if this kilogram went down
7 without a hitch in it, that there would be no problem in
8 my obtaining any quantity of cocaine I wanted.

9 Q Then what happened?

10 A I left. We shook hands and I left the area.

11 I then instructed my surveillance to maintain a
12 surveillance of Ivan Santiago's apartment house, and they
13 saw certain movements and maneuvers between Ivan Santiago
14 and Hiram Montanez.

15 THE COURT: You were not present?

16 THE WITNESS: No.

17 MR. DiRENZO: That's objected to. Move to strike.

18 THE COURT: Objection sustained.

19 Q Just tell us what you did that evening.

20 A I went down to Arlene Carlton's apartment with
21 the money. I waited for a signal from my surveillance on
22 the street at that second location, which would indicate to
23 me that in fact--

24 MR. DiLORENZO: That's objected to, your Honor.

25 THE COURT: I will let him state it.

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Salvemin-direct

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2 A Ivan Santiago and Hiram Montanez were placed
3 under arrest. In fact, they were not coming to the apart-
4 ment. When I was certain of that, I went up to the apart-
5 ment. I threw it back on Arlene Carlton. I told her,
6 "These people are not worth anything. See, I am here; they
7 are not here."

8 I waited for about 15 minutes until a quarter
9 after eight, and then I left.

10 THE COURT: Did you arrest her then, too?

11 THE WITNESS: No. The problem was that I was
12 undercover in three different cases with intertwining de-
13 fendants and I didn't want to burn myself. I stayed up
14 there long enough to show that I was not involved in any
15 arrest.

16 Of course, she got the word later on that there
17 was an arrest but she could vouch for me being up in the
18 apartment.

19 Q What did you do then?

20 A I maintained my undercover contacts with Arlene
21 Carlton and Thomas Mattio and the other defendants in the
22 cases. I did not have anything else to do with these de-
23 fendants other than after they were removed from the de-
24 fendant Ivan Santiago's apartment, I did secure the apartment
25 and waited for a federal search warrant.

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Salvemini-direct

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2 Q Was a search warrant subsequently executed in
3 that apartment?

4 A Yes. Dan Pykett from the U. S. Attorney's Of-
5 fice prepared a search warrant for us and approximately two
6 o'clock the following day we executed a search warrant on
7 the premises.

8 THE COURT: That would be June 12?

9 THE WITNESS: Yes, your Honor.

10 Q Did you participate in the execution of that
11 search warrant?

12 A Yes, sir, I did.

13 MR. SALERNO: We would like to make an offer of
14 proof as to what was recovered in that search warrant, and
15 I understand that Mr. DiRenzo is prepared to stipulate as
16 to what was recovered, but he objects to the relevancy.

17 So we will not present witnesses who will testify
18 as to the chemical combinations that were found there.

19 Mr. DiRenzo I gather is prepared to stipulate as
20 to the results of the search, though he objects, as I say,
21 to the relevancy.

22 MR. DiRENZO: Basically that is true. I have
23 stated to Mr. Salerno that I would object to the receipt or
24 the introduction of the return on the search warrant on the
25 ground that it would not be within the purview of the issues

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Salvemini-direct

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2 involved in this particular complaint, but that if your
3 Honor ruled against me on my objection, then it would not
4 be necessary for him to call in a chemist or anybody else.

5 THE COURT: I will rule it is admissible to show
6 the nature of the claimant's activities.

7 MR. SALERNO: I take it, your Honor, that the
8 stipulation would be that the materials found were as set
9 forth in Item 7 of our proposed findings of facts and con-
10 clusions of law or in the identical list at pages 6 and 7
11 of our trial memorandum, which is what Mr. DiRenzo and I
12 discussed on the phone.

13 MR. DiRENZO: That is correct.

14 Q Did you participate in the seizure of a vehicle
15 in connection with this investigation?

16 A Yes, sir, I did.

17 Q What did you do in that respect?

18 A On the 12th, I believe it was in the afternoon,
19 myself and several other special agents proceeded to Dick
20 Gidron, Cadillac dealership in the Bronx, and we seized a
21 1974 two-door red Eldorado.

22 Q Do you recall the license --

23 THE COURT: I don't follow. You proceeded to
24 where?

25 THE WITNESS: The Cadillac dealership. Dick

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Salvemini-direct

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Gidron was the name of the Cadillac dealership where it was stored at the time in the Bronx.

Q Can you describe that vehicle any further with respect to --

THE COURT: Is that the car that is the subject matter of this transaction?

MR. DiRENZO: That is correct.

THE COURT: Is that the car which the Government claims was driven by the claimant in which Montanez was also a passenger on June 7 to the 24th Street address?

MR. SALERNO: That is correct.

MR. DiRENZO: That is correct, your Honor.

Q Will you tell the Court, then, why you seized that automobile?

A Yes, sir. Because the defendant Santiago had utilized it to come to the meeting with me on the 7th of June, 1974, and negotiated and arrived at a transaction for cocaine.

Q At the time you seized the vehicle, how did you know that?

MR. DiRENZO: Of course, I object to the characterization he gives in the answer, to wit, that he negotiated a transaction.

I move that that part of the answer be stricken.

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Salvemini-direct

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THE COURT: Well, he had the discussion that he testified to earlier.

We will take his answer as amended that way.

MR. DIRENZO: If I err, I want to err on the side of caution.

Q I want to get it absolutely clear, Mr. Salvemini. What were you told at or about the time that you seized the vehicle?

A I was fully aware that that Cadillac was the vehicle that Hiram Montanez and Ivan Santiago had utilized on the 7th and also the fact that immediately after the purchase of Exhibit No. 1 in this case, the eighth of a kilogram, when Hiram Montanez was followed back to Ivan Santiago's apartment, that that was the same vehicle that was in front of the apartment at the time.

THE COURT: I don't follow that.

(Record read)

THE COURT: That wasn't the vehicle that Montanez went back from the restaurant in to the apartment where you met him, is it?

THE WITNESS: No. The vehicle was in front of Ivan Santiago's apartment on that date again.

THE COURT: It was in front of the building, parked there?

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2 THE WITNESS: Right.

3 Q Did you see it there, Mr. Salvemini?

4 A No. I was aware that it was there. I did not see
5 it.

6 MR. DIRENZO: Then I move the answer be stricken.

7 THE COURT: The answer is stricken, but even ac-
8 cepting his statement, I just want to make sure I under-
9 stood: That vehicle was not used again in connection with the
10 transaction?

11 THE WITNESS: No. Not to my knowledge.

12 THE COURT: The only time it was used was on June
13 7th?

14 THE WITNESS: Yes, sir.

15 THE COURT: In order to transport both Montanez
16 and Santiago to the East 24th Street address?

17 THE WITNESS: Yes.

18 THE COURT: Where they left the car and then went
19 up into the apartment?

20 THE WITNESS: Yes, sir.

21 THE COURT: And presumably they left again and
22 drove away in the car?

23 THE WITNESS: Yes, sir.

24 Q Once more, because I am not certain that I ever
25 got an answer to this: How did you know at the time you

1 seized the vehicle that the vehicle had been used on June
2 7th in the way that you described?

3 A It was the same plate number, the same exact
4 car we had seen.

5 Q Did you personally see the vehicle on the 7th?

6 A Special Agent O'Connor is the one that saw the
7 vehicle.

8 Q So how did you find out that that was the vehicle?

9 A I was informed. I was the acting group supervisor
10 at the time.

11 MR. DiRENZO: Then I move --

12 THE COURT: The answer is stricken.

13 MR. SALERNO: The reason we are offering that is
14 because it goes to the probable cause which under the statute
15 is required for the seizure of the vehicle.

16 I think the probable cause allows the hearsay.

17 THE COURT: Is there any issue, though, as to
18 whether or not the vehicle did convey the claimant Ivan
19 Santiago and Hiram Montanez to the East 24th Street premises
20 on June 7th?

21 MR. DiRENZO: There is no question.

22 THE COURT: Then what is the problem?

23 MR. SALERNO: I wanted to establish for the Court
24 that at the time Mr. Salvemini seized the vehicle, he knew
25

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Salvemini-direct

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2 that, that's all. That's all I was trying to get at.

3 THE COURT: You can bring another witness to
4 establish it, so it does not make any difference, really,
5 does it?6 MR. DiRENZO: I think under the circumstances
7 he is not qualified to testify to that, and that was obvious
8 from the answer that he gave, that he was informed by some-
9 one.10 THE COURT: On probable cause he can act on hear-
11 say, can he not, under the cases?

12 MR. DiRENZO: That might well be.

13 THE COURT: We will take his statement.

14 MR. SALERNO: It is only offered, your Honor,
15 to show probable cause, not to show the merits of the is-
16 sue.17 Q In your work as a Drug Enforcement Agent, have
18 you operated undercover at times other than in this inves-
19 tigation?

20 A Yes, sir.

21 Q What proportion of your work has been undercover?

22 A I'd say the vast majority of my work over the last
23 seven and a half years has been undercover.24 Q Have you purchased illegal drugs in an undercover
25 capacity in these investigations?

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2 A Yes, on several hundred occasions.

3 Q Did you say several hundred?

4 A Yes.

5 Q In this work, have you observed the people you
6 deal with using automobiles?

7 A Yes, I have.

8 Q About how often?

9 A Almost all the time. I would say 95% of the time
10 they utilize a vehicle.

11 MR. DiRENZO: I object to this line of question-
12 ing.

13 THE COURT: I sustain the objection.

14 We are concerned here in this case with whether
15 or not this vehicle was used to facilitate the sale in
16 question, and the fact that in this illicit business auto-
17 mobiles are used does not establish the evidentiary support
18 for the use of a vehicle to facilitate the transaction that
19 is at issue.

20 MR. SALERNO: That does not, your Honor --

21 THE COURT: I am going to rule that way particu-
22 larly in the light of this witness' testimony that the
23 proposal was by him to effect the transaction through the
24 means of two rented cars or to conclude the transaction in
25 an apartment.

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Salvemini-direct

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2 MR. SALERNO: That is correct, your Honor, but
3 I think I am trying to establish through the testimony
4 that there may be particular ways in which particular
5 kinds of vehicles will be used, in narcotics transactions.

6 I think I have established that he may have some
7 expertise in that matter, and I think what his testimony
8 might do is justify an inference that the use of this par-
9 ticular kind of vehicle for this particular purpose as op-
10 posed to transportation of actual illegal drugs might have
11 been intended by the people for a particular purpose re-
12 lated to the narcotics business.

13 THE COURT: I am sorry, I don't follow that
14 statement.

15 You better clarify that.

16 MR. SALERNO: I hesitate to offer proof in the
17 presence of the witness, your Honor. I don't want to prompt
18 the witness.

19 May we perhaps have a side bar conference on
20 this?

21 THE COURT: All right. I will hear you in the
22 robing room.

23 (In the robing room)

24 MR. SALERNO: Your Honor, it is simply this, that
25 his observation has been that frequently a flashy car, such

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Salvemini-direct

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2 as is involved here, might be used by the top man in any
3 narcotics conspiracy as a show to the people he is dealing
4 with, whereas in the actual transaction, which might be
5 done first of all through underlings, and second of all,
6 using cheaper cars, precisely in part because of the for-
7 feiture provisions, and also because the flashy car some-
8 times lends credibility to what the seller in this case is
9 proposing; namely, it lends credibility --

10 THE COURT: Yes, but this theory has to yield to
11 the evidence. According to this witness' testimony, he
12 was in the apartment. How could he have been influenced
13 by a flashy car?

14 MR. SALERNO: Because there is no knowledge on
15 Santiago's part when he came there that the witness would
16 not go down there. The witness could have gone --

17 THE COURT: That is so farfetched, please, let's
18 stick to evidence. He could have. Did he look out the
19 window?

20 MR. SALERNO: No, he did not.

21 THE COURT: Why are we spending time on anything
22 like that?

23 MR. SALERNO: I will drop that, your Honor.
24 I thought it was relevant.

25 THE COURT: I don't, with due respect.

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Salvemini-direct/cross

35

2 (In open court)

3 THE COURT: You may continue your questioning.

4 MR. SALERNO: No further questions of this wit-
5 ness.

6 CROSS-EXAMINATION

7 BY MR. DIRENZO:

8 Q Mr. Salvemini, on June 7, 1974, did you personally
9 see the vehicle that's the subject of this particular transac-
10 tion?

11 A No, sir, I did not.

12 Q With reference to the conversation that you say
13 you had with with Mr. Santiago on June 7, did there come a
14 time when Mr. Santiago told you that he was not interested in
15 the manner in which you wanted to negotiate this deal?16 A That's absolutely incorrect, sir. He agreed
17 to consider my proposals and I agreed to consider his, rela-
18 tive to the method of conducting the transaction.19 Q There was talk about two vehicles being used,
20 rented vehicles, is that correct?21 A There was talk about several methods of conducting
22 the transaction, yes, sir.23 Q He didn't agree with the method you suggested, is
24 that correct?

25 A No, sir, he did not.

1
2 Q He did not agree?

3 A That is correct.

4 Q When he left the apartment at which you and he
5 and Montanez were having this conversation, at that point
6 you still had not agreed --

7 A Well, sir, we had agreed to price and we had
8 agreed to quantity, but what we had not agreed to was
9 whether we were going to use Arlene Carlton's apartment or
10 two rented cars.

11 Q When you say you agreed, aren't you saying that
12 there was a discussion?

13 A No, sir.

14 Q One minute, please.

15 There was a discussion about the price of a kilo
16 being \$26,000, is that correct?

17 A No, sir, that's incorrect. When I arrived at the
18 apartment and when he arrived at the apartment, the argument
19 was an eighth of a kilogram or no deal.

20 When we left the apartment, the deal was \$26,000
21 for a kilogram with the method to be decided subsequently.

22 Q Is it your contention that at the point where
23 he left the apartment that you had a definite conclusive
24 arrangement or a meeting of the minds as to what you were
25 going to do in connection with his meeting there that day,

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2 June 7th?

3 A I am afraid I don't understand the question.

4 THE COURT: Reframe your question.

5 Q What arrangement do you say was made between you
6 and Santiago on June 7? What was agreed upon between you?

7 A I was to purchase a kilogram of cocaine for
8 \$26,000 with the physical method of conducting the transac-
9 tion to be decided at a later date.

10 Q So that it is your testimony that on June 7, in
11 words or substance, he stated to you, "I will meet you at
12 some later date and at that time I will supply you with a
13 kilo for \$26,000, provided you do things the way I want
14 you to do them"?

15 A Sir, those are your words, Not his. I believe
16 I have already testified as to exactly what he said.

17 Q Tell me again. What exactly did he say?

18 A "I will sell you one kilogram of cocaine for
19 \$26,000, but that's all I will be able to sell you until I
20 bring the 50 kilograms in. Once I bring the 50 kilograms
21 in, you can have all you want. I don't want to deal in a
22 car on the street. I want it to be a natural thing." And
23 he used as an example a Christmas package, a gaily wrapped
24 Christmas gift with a kilo of cocaine in it which he could
25 hand to me in front of many people and no one would be the

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2 wiser.

3 Immediately prior to his leaving the apartment,
4 Counselor, he stated to me that he would consider my pro-
5 posal of utilizing two rental cars and I agreed to consider
6 his proposal, and we agreed to meet at a time in the not too
7 distant future and conduct the transaction, which was to
8 be for one kilogram of cocaine.

9 Q Did you ever meet him?

10 A I never met him again, no, sir.

11 Q Although you said you would meet?

12 A He didn't say I would meet him.

13 Q Didn't I understand you to state a moment ago,
14 in answer to a question that was just put to you, that there
15 was going to be another meeting between you? Wasn't that
16 your language?

17 A Counselor, it was quite clear, and I am sorry if
18 I didn't bring this out, that any physical transfer would
19 take place between myself and Hiram Montanez.

20 Q It was quite clear in your mind? That's what
21 you are saying.

22 A No one asked me the question.

23 Q I am asking you.

24 A I am telling you.

25 Q What are you telling me?

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Salvemini-cross

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2 A That it was quite clear between myself and Ivan
3 Santiago that he would physically not touch the cocaine.

4 Q Did he ever say that to you?

5 A Yes, he did.

6 Q He said that? You didn't testify to that on di-
7 rect examination, did you?

8 A Do you want me to go into the details?

9 Q No. I just asked you. You didn't testify to
10 that on direct examination.

11 A No one asked me the question, Counselor.

12 Q You didn't testify to that before Judge Motley
13 in the suppression hearing.

14 A I never testified before Judge Motley in the
15 suppression hearing at all, Counselor, so it would be quite
16 impossible for me to testify to that.

17 Q One thing is certain, by your testimony, he said
18 nothing would transpire in the car? Did you give us that
19 answer a moment ago?

20 A He did not want to conduct the transaction in
21 the street, as I wanted to do. He wanted to conduct the
22 transaction in an apartment. There was never any specific
23 discussion about the car other than the cars I mentioned,
24 Counselor.

25 THE COURT: The cars you mentioned, as I understood

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2 your testimony, was two rented cars?

3 THE WITNESS: That is correct.

4 THE COURT: It certainly was not his car.

5 THE WITNESS: Absolutely.

6 Q In any event, you never again spoke to Ivan
7 Santiago until the day he was arrested?

8 A I never saw Ivan Santiago again from June 7,
9 1974 until this morning, Counselor.

10 Q To your knowledge, did Jerry, I think you said
11 his name was Gile, he never met with Santiago again either,
12 did he?

13 A Not to my knowledge.

14 Q It is also correct that none of your agents,
15 those under your control or otherwise, had any conversation
16 or meeting with Mr. Santiago, is that correct?

17 A That's incorrect.

18 Q I beg your pardon?

19 A That's incorrect, Counselor.

20 Q To what extent is it incorrect?

21 A There were undercover negotiations with several
22 other agents in the office pending during that period of
23 time with Mr. Santiago.

24 Q Others spoke to Mr. Santiago with reference to
25 the transaction you say you had with him on June 7, is that

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2 your testimony?

3 A No, it is not. You said to my knowledge no one
4 had spoken to him, and that's incorrect.

5 Relative to this case, to my knowledge, no one
6 ever did speak to him again.

7 Q That's what we are talking about, this case.

8 A You made a general statement, Counselor. Then you
9 scream at me if I didn't answer correctly.

10 Q I didn't mean to scream at you.

11 A That makes me feel a little better.

12 Q I could see it.

13 This conversation took place with Mr. Santiago
14 on the 7th?

15 A That is correct.

16 Q When did you next have a conversation with Mr.
17 Montanez?

18 A On the morning -- well, twelve noon of the 10th
19 of that year, that month.

20 Q That's some three days later, is that correct?

21 A Yes. That was a Friday afternoon. That would be
22 a Monday morning.

23 Q On that occasion you met with Mr. Montanez, cor-
24 rect?

25 A That is correct.

1
2 Q You didn't meet with Santiago?

3 A Absolutely not.

4 Q You didn't see Montanez in Santiago's vehicle,
5 the subject of this transaction, this particular case?

6 A I never saw that vehicle until the morning-- the
7 afternoon I seized it.

8 Q By the way, do you know the plate number of it?

9 A Offhand I do not. It is in my report, Counselor.

10 Q Incidentally, you say that Arlene Carlton par-
11 ticipated in this conversation on the 7th?

12 A No, sir, I did not. She was present, she had
13 very little to say. When you say participate, if you mean
14 by being physically present and saying a word or two, then
15 the answer is yes. If you mean did she actively partici-
16 pate in the negotiations with the two defendants, then the
17 answer is no.

18 Q As a matter of fact, Carlton wasn't even in the
19 room when you had this discussion, isn't that correct?

20 A She left for the vast majority of the discussion,
21 right after the introduction-- she came back when Ivan
22 Santiago asked her about the utilization of the apartment,
23 she was there for a couple of minutes before and after that,
24 but for the vast majority she was not-- she went in the
25 bedroom.

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2 Q When you say Mr. Santiago asked her about the
3 utilization of her apartment, he asked her that question
4 in your presence?

5 A Yes, sir, that is correct.

6 Q Where did this conversation take place?

7 A The conversation-- it is a one-bedroom apartment.
8 This took place in the living room by the window. There
9 are two sofas, I believe, a chair and a coffee table. That
10 is where we were seated.

11 Q Incidentally, this apartment that we are talk-
12 ing about, did she reside there, do you know?

13 A Yes, that was her residence apartment.

14 Q Was she conducting a business there, to your
15 knowledge?

16 A Not in that apartment, no, sir.

17 Q Wasn't that a house of pleasure?

18 A If you are talking about the apartment next door
19 which was her place of business, that was a house of pros-
20 titution. Her apartment where we conducted the negotia-
21 tions was her residence apartment. She had two apartments
22 on the same floor.

23 Q Was she Jerry's girl friend?

24 A No, not to my knowledge.

25 Q But he had been going there --

THE COURT: Who is Jerry?

MR. DiRENZO: Jerry Gile.

Q Is that correct, the name?

THE WITNESS: That's the Jerry I was referring to ,yes, your Honor.

Q He had been in that apartment on many, many occasions, had he not, to your knowledge?

A Who, myself or him?

Q Jerry.

A Yes; to my knowledge, yes.

Q He was a customer there, wasn't he?

A Not to my knowledge.

Again, you are asking me to give hearsay testimony. I would say absolutely not; without having been physically present in the apartment to observe all the activities, Counselor.

Q Do you know whether he had been there approximately about a year and a half before that time and kept going back and forth almost every day?

A No, that's incorrect.

Q That's incorrect?

A Yes.

Q You know that of your own knowledge?

A Counselor, unless I was physically present in that

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2 apartment for 365 days I would not know any of these an-
3 swers of my own knowledge.

4 You are asking me for my opinion of my relation-
5 ship and the informant's relationship with the individuals
6 that frequented that apartment, and I am giving you my
7 opinion.

8 Q But you were talking to Jerry right along?

9 A Again, you are asking me something- - I have no
10 idea what Jerry Gile did when he was not physically in my
11 presence.

12 Q Did you ask him if he was at that apartment?

13 A That's the answer I am giving you, Counselor.
14 You are telling me now it is a hearsay answer.

15 Q I am just asking --

16 A Jerry Gile went to that apartment very infrequently,
17 Counselor, according to the statements he gave me, until
18 the time we instituted a series of investigations, at which
19 time he started going there more frequently, at my specific
20 direction.

21 Q What specifically did you say to Mr. Santiago,
22 if anything, about a rip-off?

23 A As I recall the conversation relative to the rip-
24 off, the majority of it took place on the 6th of June, and
25 that was with Hiram Montanez, and there was very little

2 conversation relative to a rip-off. I indicated that I
3 was afraid of a rip-off to Mr. Santiago, and he reassured
4 me, and that's when we initiated the conversation about
5 places I frequented and people I knew that he might pos-
6 sibly know, things like that, in order to reassure the two
7 of us that we were both legitimate.

8 Q You made a record, I take it, of this meeting
9 that you had with Mr. Santiago and Mr. Montanez, correct?

10 A There are BND 6 reports that included that.

11 Q In those reports, I take it -- I say you did
12 make reports, correct?

13 A Yes.

14 Q I take it in those reports you made some refer-
15 ence to the fact that this could possibly be a rip-off?

16 A No. Counselor, I told them that I was afraid
17 of a rip-off. I honestly didn't feel that it was a rip-
18 off.

19 Q But did you put that in any of your reports?

20 A Absolutely, Counselor.

21 Q You did?

22 A Absolutely.

23 Q When do you say that you had this conversation with
24 Montanez; on June 6th?

25 A Yes, Counselor, June 6; my report of the meeting

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Salvemini-cross

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2 June 6, 1974, in Apartment 19T, 305 East 24th Street.

3 Q Did you say anything to him about a rip-off on
4 June 6th?

5 A Yes, sir. It is in my reports.

6 Q Is this the report? I show you the first page of
7 Exhibit A of the affidavit submitted by Paul Vizcarrondo
8 in the case of United States v. Carlton, Santiago and
9 Montanez, and ask you whether this is the report that you
10 submitted on June 6?11 A Counselor, that is not a report I submitted any-
12 where. My report is in the possession of Mr. Salerno.
13 This is something that was made up by the U. S. Attorney's
14 Office, and it is obviously clipped and deleted, and there
15 is no way I could tell whether in fact that is any portion
16 of my report, your Honor.17 My entire report is in the possession of Mr.
18 Salerno. That is not my report.19 Q There was a motion made for discovery, is that
20 correct?21 THE COURT: The witness states that was not his
22 report. Do you want his report? Is it here?

23 MR. DiRENZO: I would like to see it.

24 THE COURT: Produce it.

25 MR. DiRENZO: In the light of the answer given

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2 by this witness, I respectfully ask that all reports made
3 by this witness be made available to counsel now so that I
4 may examine them and peruse them.

5 THE COURT: Of course this is not a criminal
6 case, as you know, and Section 3500 of Title 18 does not
7 control, but nonetheless I will require that the reports
8 be turned over. In fact, I thought you had possession of
9 them in connection with your prior representation of the
10 claimant in this case in the criminal prosecution.

11 MR. SALERNO: I will turn over, your Honor --

12 THE COURT: Aren't you going a bit afield now in
13 your inquiry, Mr. DiRenzo?

14 MR. DiRENZO: I recognize that, your Honor,
15 but the only purpose for which I am going into this particu-
16 lar area is solely on the question of credibility, that's
17 all, your Honor. That's the only purpose for it.

18 THE COURT: What issue of credibility is there?
19 The car was there on June 7th. The only issue that you
20 could possibly raise is at one point the Government said
21 that at the conference or negotiation upstairs they reached
22 no result.

23 The witness claims they did come to an arrange-
24 ment at that time. The Government, to support it, re-
25 lies upon the defendant's own plea when he was asked whether

lh:mg

Salvemini-cross

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1 he met with Hiram Montanez and other individuals in
2
3 Arlene Carlton's apartment on or about June 7th and there
4 negotiated the sale of cocaine that Hiram Montanez eventu-
5 ally made the next day.

6 The issue is very simple in this case. Even taking
7 it at that point, on his own statement, the issue still re-
8 mains whether or not the use of the car to transport two
9 men to an apartment where there was discussion and a nego-
10 tiation leading to the arrangement for a sale at the ap-
11 propriate time is the facilitation-- is facilitation within
12 the meaning of the statute.

13 MR. DiRENZO: I am afraid I must agree with
14 your Honor. I will not pursue the area.

15 Q At the meeting on the 7th, is it your testimony
16 on direct examination that you objected to the purchase
17 of the sale of a one-eighth kilo?

18 A Yes, sir, it is.

19 Q But Mr. Santiago said a kilo would be all right,
20 not an eighth?

21 A He came around to my way of thinking. I told
22 him I didn't deal in eighths. I told him a kilo would be
23 the smallest I would do.

24 THE COURT: Incidentally, Mr. Witness, coming
25 back to this statement that I just referred to that was made

lh:mg

Salvemini-cross

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1
2 at the time of the entry of the plea, which I read a
3 moment ago, the last part is that Hiram Montanez eventu-
4 ally made the next day, that is not correct, is it?

5 THE WITNESS: No, your Honor.

6 THE COURT: The transaction was not concluded the
7 next day? It was three days later, on the 10th?

8 THE WITNESS: That is correct, your Honor.

9 THE COURT: That is a mistake, obviously?

10 THE WITNESS: That's right. There was a week-
11 end, I believe.

12 THE COURT: I think you said June 7th was a Fri-
13 day and on Monday you met him, Montanez, at The Library
14 Restaurant?

15 THE WITNESS: That's correct.

16 THE COURT: So I have the sequence right? There
17 you negotiated for the sale of an eighth of a kilo which
18 you purchased that night, delivery was made at the apartment
19 of Arlene Carlton?

20 THE WITNESS: Yes. We did have discussion about
21 the kilo there, but I still could not get them to go
22 outside.

23 THE COURT: And the following day you were about
24 to consummate the purchase of a kilo?
25

lh:mg

Salvemini-cross

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THE WITNESS: Right.

BY MR. DiRENZO:

Q This entire conversation in the apartment took some 20 or 25 minutes?

A About a half an hour, roughly.

Q You are positive that both Montanez and Santiago left at the same time?

A Absolutely certain, Counselor.

Q Isn't it a fact -- state your recollection -- that Montanez left the apartment and left Santiago in the apartment-- he waited outside the door?

A Counselor, I distinctly remember the two of them getting up together, shaking hands with me and leaving together.

Q There was never a discussion at that time about-- with Santiago, with reference to Montanez meeting anybody at The Library, is that correct?

A No, Counselor.

Q Incidentally, The Library is a restaurant, is it not?

A Yes, I believe it is at 94th Street and Broadway in Manhattan.

Q You never had Mr. Santiago under surveillance yourself any time between June 7 and June 11, is that correct?

lh:mg

Salvemini-cross

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1
2 A No, sir, I did not.

3 Q Were you at the apartment, did you go to premises
4 687 Walton Avenue in the Bronx on the 11th?

5 A Yes, I did, about 10:30 that night.

6 Q You said your men had Mr. Santiago and those
7 premises under observation, is that correct, in the interim?

8 A Prior to the arrest of-- any of the arrests going
9 down in the case.

10 Q You subsequently ascertained that Mr. Santiago
11 resided in Apartment 4H of those premises?

12 A Yes, sir. I believe that's the apartment number
13 without looking at my notes.

14 Q When you went there, it is a fact, isn't it, that
15 you didn't go to Apartment 4H? You went to an apartment
16 on the second floor, isn't that correct?

17 A Absolutely incorrect, Counselor. Assuming Apart-
18 ment 4H is the apartment.

19 Q That is the apartment. I am not trying to trick
20 you.

21 A The only apartment in that building I ever went
22 to or to my knowledge any of the other officers went to was
23 that apartment, Ivan Santiago's apartment.

24 Q Do you know now that your agents went to an
25 apartment on the second floor?

lh:mg

Salvemini-cross

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1 A No, sir, I don't. In any event, Mr. Santiago
2
3 is the one that took them to the apartment. It was Apart-
4 ment 4H.

5 Q He took them up to the apartment?

6 A Yes, sir. As a matter of fact, as I recall, he
7 insisted that they search the apartment immediately. We
8 were the ones that insisted on obtaining a federal search
9 warrant.

10 Q Isn't it a fact that Mr. Santiago was kept in
11 a government vehicle in front of those premises?

12 A Not to my knowledge, Counselor.

13 Q Isn't it a fact that he never went to the apart-
14 ment?

15 A My understanding, Counselor, is that he accompan-
16 ied the agents to the apartment; they entered the apart-
17 ment. And then he was transported down to the office.

18 We secured the apartment and obtained a federal
19 search warrant the following day.

20 Q When you say you "secured" the apartment, you mean
21 your agents under your supervision did that?

22 A Actually it was better than that, Counselor.
23 I myself and two other agents remained overnight in the
24 apartment until we obtained a federal search warrant from
25 the United States Magistrate, and then we executed the warrant.

1 lh:mg
2 Q Isn't that after you had taken the keys out of
3 his pocket while he was handcuffed and in a government
4 vehicle in front of 687 Walton Avenue?

5 THE COURT: Mr. DiRenzo, what does this have to
6 do with the case?

7 MR. DiRENZO: The only significant or proba-
8 tive value that it might have, your Honor, again, is on
9 the question of credibility, and I would most respectfully--

10 THE COURT: He wasn't present. He secured the
11 apartment.

12 MR. DiRENZO: They had him under surveillance.
13 His only connection with the apartment was, to use his
14 expression, to secure it, and he explained how he secured
15 it. He stayed there overnight.

16 Q That was after you had a written consent from
17 the defendant?

18 A As I understand it, we had a written consent to
19 search the apartment which we declined to utilize.

20 Q You subsequently got a search warrant predicated
21 on the consent?

22 A Yes. It was 10:30 that night. We could not get
23 one that night. We got one the next day. Not predicated
24 on the consent, Counselor; predicated upon the fact that
25 upon entering the apartment in the search for any other

lh:mg

Salvemini-cross

55

1 individuals, there was cocaine and large sums of money
2 in plain view. It was predicated on those facts.

3
4 Q That was all testified to before Judge Motley?

5 A I don't know. I wasn't there.

6 Q I don't take it you ever read any of the state-
7 ments in connection with it or the testimony that was of-
8 fered by your own agents?

9 A No, sir, I did not.

10 Q Did you know the keys were taken from his pocket?

11 A Counselor, I wasn't there. I told you that.

12 Q I mean you don't know that to this day?

13 A Absolutely not.

14 Q That consent was signed somewhere around 9:30,
15 10:00 o'clock at night?

16 A As far as I know, Counselor, I was advised of
17 that consent approximately five o'clock or, no, excuse me,
18 approximately nine o'clock or 9:30 in the evening. I ad-
19 vised my agents, I was the acting supervisor, I advised my
20 agents not to execute the search, to look in the rooms, make
21 sure there was nobody in those rooms, no other defendants,
22 potential defendants or anyone else that could destroy any
23 evidence in the premises, and to secure the premises.

24 I then went up there physically and myself I
25 physically went up and took hold of the situation.

1 We never executed the consent to search. We
2 waited for the issuance of a federal search warrant.

3 Q And the consent was signed in the government ve-
4 hicle, correct?

5 A Counselor --

6 THE COURT: He wasn't there. Why are we spending
7 time on that, Mr. DiRenzo? The witness has repeatedly
8 stated he was not present.

9 Q Incidentally, when this vehicle you say was
10 seized, that was on June 12, is that correct?

11 A Yes, it is.

12 Q At that particular time the automobile was being
13 serviced at a Cadillac agency?

14 A I believe they told us it had a broken power
15 antenna.

16 Q In other words, it was being repaired?

17 A Yes.

18 Q Did you ascertain when that vehicle was brought
19 in for repair?

20 A I didn't.

21 MR. DiRENZO: I have no further questions.

22 THE COURT: Any redirect?

23 MR. SALERNO: No redirect, your Honor.

24 THE COURT: The witness is excused.

25 (Witness excused)

1 lh:mg

2 MR. SALERNO: That concludes the Government's di-
3 rect case.

4 MR. DiRENZO: At this time, your Honor, I would
5 respectfully move to strike out all of that testimony that
6 was taken subject to connection on the ground that it has
7 not been connected.

8 THE COURT: Motion denied.

9 MR. DiRENZO: Respectfully except.

10 Now, if your Honor pleases, I move for judgment
11 on the pleadings and on the testimony offered by this par-
12 ticular witness on the ground that the only evidence estab-
13 lished here was that the vehicle in question was used for
14 no other purpose or solely for the purpose to suit the con-
15 venience of the claimant in this case to reach a certain
16 area.

17 It in no way constituted a facilitation within
18 the meaning of the statute.

19 As I read the facilitation statute, and I don't
20 know, the Courts have given strict interpretations or loose
21 interpretations of the word "facilitate," they seem to skirt
22 the question of facilitation.

23 As I read it, the facilitation should be in con-
24 nection with the transportation, the concealment, and all
25 of the other items that are contained in the statute.

2 The facilitation should be in connection with
3 each of the items set forth in the statute.

4 I submit that as one of the judges in the Tenth
5 Circuit decided, and I have it in my memo, that on that
6 particular ground, there is a serious question as to whether
7 constitutionally it is not indefinite and vague.

8 I submit as a matter of law that this case as it
9 is presently presented to the Court does not rise suffi-
10 ciently in order to justify a forfeiture.

11 THE COURT: Mr. Salerno, what role do you contend
12 the car played in facilitating this transaction? Precisely
13 what was its function in furthering--

14 MR. SALERNO: Precisely, your Honor, it was
15 used by Mr. Santiago, who is a substantial narcotics dealer,
16 the testimony shows that, to transport himself and a con-
17 federate to a place where he clearly negotiated a sale with
18 some terms open. He has pleaded guilty to a conspiracy--

19 THE COURT: You are saying, using it as a means
20 of conveyance to a place where he discussed a narcotics
21 transaction, that means it facilitated the transaction?

22 Suppose he walked there?

23 MR. SALERNO: Then there would be nothing to
24 forfeit.

25 THE COURT: Might you not argue that his personal

2 possessions on his person while he was walking were sub-
3 ject to forfeiture?

4 MR. SALERNO: No, your Honor, because the statute
5 merely says-- provides that conveyances that facilitate --

6 THE COURT: Supposing he engaged a taxicab; would
7 the taxi be subject to forfeiture?

8 MR. SALERNO: I think that might be subject to
9 one of the two exceptions in the statute: either use with-
10 out the knowledge of the owner -- there could be no intent
11 obviously on the part of a cab driver to facilitate any
12 kind of narcotics dealing, and if there were, it would be
13 forfeitable. There is an exception for the common carrier
14 for precisely that reason.

15 THE COURT: Assuming that the claimant here owns
16 an airplane and he was based in Suffolk and flew into the
17 heliport and left the airplane there and walked over to
18 the apartment here; would the airplane be subject to for-
19 feiture?

20 MR. SALERNO: That is beginning to get, your Honor,
21 where we recognize that the nexus between the use of the
22 vehicle and the actual illegal activity becomes somewhat
23 remote. I am not quite sure --

24 THE COURT: Why is that more remote than driving
25 an automobile as a means of conveyance?

2 MR. SALERNO: Only because that got him just to
3 the general area of Manhattan and he would have to use
4 some other conveyance--

5 THE COURT: Supposing the heliport were right
6 adjacent to 24th Street. At one time there was one at
7 23rd Street, as a matter of fact.

8 MR. SALERNO: I think in that circumstance --
9 You said it was the claimant's airplane in the hypotheti-
10 cal?

11 THE COURT: Yes.

12 MR. SALERNO: We believe it would be seizable.

13 THE COURT: One case you didn't discuss is
14 United Staets. v. 1972 Datsun at 378 F. Sup. 1200.

15 MR. SALERNO: I believe I cited it although I
16 admit I did not discuss it.

17 MR. DiRENZO: I believe I did.

18 THE COURT: I didn't see your brief until you
19 walked into the courtroom. It would have been helpful
20 if you had submitted it over the weekend.

21 MR. SALERNO: I may not have cited it, your
22 Honor. I thought I had. I recognize that as a contrary
23 case, though I think once again--

24 THE COURT: In that case Judge Bownes after
25 reviewing various cases, came to the conclusion that to be

1 forfeited, a vehicle must have some substantial connection
2 to or be instrumental in the commission of the underlying
3 activity which the statute seeks to prevent.
4

5 MR. SALERNO: That is true, your Honor. I have
6 two comments about that case.

7 One is that in a footnote I think it recognizes
8 that the cases upon which we rely, principally the Pontiac
9 case decided by Judge Libell in this District, stands for
10 a somewhat broader rule.

11 Second of all, I think the case on its facts is
12 clearly contrary to our case, as I recall the facts. I
13 think to that extent it is a case which should not be fol-
14 lowed in this District.

15 I think the use of the vehicle in this case
16 was instrumental in that it was used according to--

17 THE COURT: The only use of it was the conveni-
18 ence of the claimant in going to 24th Street.

19 MR. SALERNO: Correct, your Honor.

20 THE COURT: There is no use of the car in any
21 sense insofar as transporting the narcotics is concerned
22 or using the car as a place of negotiation or as some of
23 the cases put it, as a decoy.

24 MR. SALERNO: That is true.

25 THE COURT: The case really narrows down here on

the facts to the use of the car for the convenience of one of the parties who is a conspirator.

MR. SALERNO: Or maybe both of the parties, your Honor.

THE COURT: Or both of them.

Is that sufficient to require forfeiture?

MR. SALERNO: As I say, I think convenience kind of begs the question. We submit that Santiago came to this meeting and his statement at the outset of the meeting was that he was there to straighten out the problem that Salvemini and Pete had had the previous day.

THE COURT: Instead of walking there, he used his car to get there. You say having used his car that that was a facilitation of the eventual sale?

MR. SALERNO: Yes, intending to make a trip that clearly furthered his narcotics business. He pleaded guilty to an indictment for conspiracy in which that meeting was admitted --

THE COURT: I am accepting that and disregarding your statement in the brief that the meeting-- what was the expression you used, was inconclusive.

MR. SALERNO: I think I meant inconclusive only on the point that Mr. Salvemini testified that it was inconclusive, your Honor.

2 THE COURT: I am trying to get this down to
3 what I think is the basic question here. This was the
4 sole use of the car. Three days later the transaction is
5 consummated, the car plays no part in any other step in
6 connection with that transaction.

7 MR. SALERNO: That is correct.

8 THE COURT: Actually the co-conspirator who
9 consummated the transaction used another car when he made
10 delivery.

11 In addition to that, there is the testimony in
12 this case of the witness, now, that his proposal was to use
13 two rented cars, which immediately excludes the car in
14 question as being used to further the sale, or, alternatively,
15 the conspirator's proposal that the transaction be consummated
16 in an apartment.

17 MR. DiRENZO: Your Honor, there is one other
18 point I would like to make, and that is that the plea taken
19 by the defendant in this case was a plea to a conspiracy
20 and not to sale, and I think that also is a very, very --

21 THE COURT: Except there is an overt act that he
22 acknowledged at the time of the plea which admittedly is
23 incorrect certainly in one very substantial respect, and
24 that is the date of the delivery of the narcotics which he
25 placed -- he didn't place it, the Assistant stated it took

1 place the next day, and he agreed that was so.

2 I will reserve decision on the motion.

3 MR. DiRENZO: Then I will put the defendant on.

4 I V A N S A N T I A G O, called as a witness

5 in his own behalf, being first duly sworn, testified

6 as follows:

7 DIRECT EXAMINATION

8 BY MR. DiRENZO:

9 Q Mr. Santiago, you are the claimant in this action?

10 A Yes, sir.

11 Q You are also a named defendant in a case cap-
12 tioned United States District Court, Southern District of
13 New York, designated United States of America v. Arlene
14 Carlton, Ivan Santiago and Hiram Montanez, under Indictment
15 No. 74 Cr. 623; is that correct?

16 A Yes, sir.

17 Q Did there come a time when you had occasion to go
18 to premises 304 East 24th Street, Borough of Manhattan, City
19 and County of New York?

20 A Yes, sir.

21 Q In connection with your visit to the apartment at
22 those premises, when for the first time did you learn you
23 were going to that particular apartment?

24 A I didn't know until earlier that afternoon.
25

lh:mg

Santiago-direct

65

Q Where did you learn earlier that afternoon that you were going to a place on 24th Street?

A By my business.

Q Where was your business located?

A 52 East 167th Street.

Q What type of business were you operating?

A Ladies' apparel.

Q Can you approximate the time that you first learned about this meeting that you were going to have?

A It was about four o'clock, a little close to four.

Q P.M.?

A Correct.

Q Did you have your vehicle, the subject vehicle, in this particular action?

A Yes.

Q At that time?

A Yes.

Q Where specifically was that vehicle when you arrived at the store?

A Double-parked in front of the store.

Q Had you driven there and double-parked it as soon as you got out of the store?

A Correct.

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Q Did there come a time that you saw someone?

A Yes, Hiram Montanez.

Q He was the co-defendant named in that particular indictment, is that correct?

A Yes, sir.

Q As a result of the conversation you had with him, did you then go to 24th Street?

A Yes, sir.

Q Did you go in your vehicle?

A Yes, sir.

Q Was there any reason in using your vehicle at that particular time in going to the premises on East 24th Street?

A Because Hiram Montanez' vehicle was parked down the block.

Q You could have taken his parking space, could you not have?

A Could have squeezed in, you know.

Q He had a Toyota, is that correct?

A Right, he had a Toyota.

Q And yours was a large car?

A Correct.

Q So at that point you agreed to drive down there, is that right?

1 lh:mg

2 A Right.

3 Q And you did drive down there?

4 A Yes.

5 Q Had you made any prearranged plan or agreement
6 with Montanez or anyone else to use that vehicle in
7 going to the premises on 24th Street?

8 A No, sir.

9 THE COURT: When you are talking about that ve-
10 hicle, which one are you referring to?

11 MR. DiRENZO: The vehicle which is the subject
12 matter of the action in this case. Let's say the defendant
13 in this action.

14 Q Was there any conersation of any kind between
15 you and Montanez prior to the time that you entered the
16 vehicle?

17 A Yes, conversation outside of the store.

18 Q Then you drove down in your vehicle with Montanez?

19 A Yes.

20 Q Was there any discussion of any kind concerning
21 narcotics or the meeting you were going to have in your
22 vehicle?

23 A No, sir.

24 Q Then there came a time when you got to the apart-
25 ment and you had a conversation with Mr. Salvemini?

lh:mg

Santiago-direct

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1
2 A Right.

3 Q Subsequent to leaving that apartment did you then
4 drive that car back to your place of business?

5 A Yes.

6 Q Was there any conversation in the car with
7 Montanez concerning any of the conversation you had in the
8 apartment?

9 A No, sir.

10 Q With reference to the conversation that took
11 place in the apartment, so that we can save some time, will
12 you tell us basically what you recall happened at that par-
13 ticular meeting?

14 A I walked into the apartment and Arlene Carlton
15 introduced me to Salvemini as Joe and Jerry -- that is the
16 first time I met any one of them- and we talked about
17 negotiating about a kilo of cocaine, right, and I didn't
18 like the way he agreed to everything, you know, so I just
19 told him to forget about it.

20 And then on my way out of the door, you know,
21 just "Nice meeting you," and everything, on the way out
22 Jerry called Pete, right, and they said something about
23 something, most likely about the eighth.

24 THE COURT: Who is Pete?

25 THE WITNESS: Hiram Montanez.

1 lh:mg

2 Q Did you physically leave the apartment when
3 Montanez was called back?

4 A Yes. I was on the other side of the door.

5 Q And was the door open or closed?

6 A It was like partially open, you know.

7 Q Ajar?

8 A Right, ajar.

9 Q Had you reached any agreement with Mr. Salvemini
10 that day about anything?

11 A None whatsoever. None whatsoever.

12 Q Was there any discussion with him that they would
13 work out the other plans in the future?

14 A On the contrary. I told Pete that if he were to
15 do business with him, that he would go to jail. That's ex-
16 actly what I told him.

17 Q Was that vehicle ever used - I am talking about
18 this case -- was it used to transport, facilitate the
19 transportation of any narcotic?

20 A No, sir.

21 Q Was it used to ~~secrete~~ any?

22 A No, sir.

23 Q Was it used for any purpose at all in connection
24 with narcotics?

25 A Just to go down and drive and talk to him.

1 lh:mg

Santiago-direct/cross

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2 Q That's all?

3 A That's it.

4 MR. DiRENZO: Your witness.

5 CROSS-EXAMINATION

6 BY MR. SALERNO:

7 Q I believe you stated that Pete approached you
8 outside your store and told you that he wanted to go to
9 Arlene Carlton's, is that correct?

10 A Right.

11 Q Where is your store again?

12 A 52 East 167th Street.

13 Q Is that in Manhattan or the Bronx?

14 A Bronx.

15 Q What did he say to you before you got into the
16 Cadillac?17 A Well, he talked about Joe, right, that he was
18 supposed --

19 Q What did he say about Joe?

20 A That he was supposed to be something in some mob
21 or something, and he was interested in buying some cocaine,
22 like a key, right. So I turned around, I said, "All right,
23 we will go down and we will see what's up."

24 We went down and that's what happened.

25 Q So at the time you got into the vehicle you knew

1 lh:mg

2 you were going some place where you would discuss cocaine,
3 is that not so?

4 A Right.

5 Q You testified that at the meeting you told Pete
6 or subsequently you told Pete to forget about it?

7 A Yes. I told him at my residence.

8 Q That was when Mr. Salvemini, Joe, was not present,
9 is that correct?

10 A Right.

11 Q Did something subsequently occur to change your
12 mind in that respect?

13 A Yes, because he was too anxious, you know, he just--

14 MR. DiRENZI: If I may, your Honor, when you say
15 "he," will you let the Court know --

16 THE WITNESS: Joe. I turned around, he was too
17 anxious, everything was "yes" all except for the agreement
18 of as far as he wanted two cars and I wanted to do it my
19 way and he didn't want to.

20 So I told him, "Forget about it."

21 That's when Pete got in contact with Jerry, and
22 then that's when I told Pete, I says, "It is up to you."

23 Q Why did you say, "It is up to you" to Pete?

24 A Because I didn't want to have nothing to do with
25 it.

1 lh:mg
2 Q You let Pete go out on his own, is that what you
3 are saying?

4 A That's right.

5 Q Did you give Pete narcotics to sell to Joe?

6 A Yes.

7 Q Cocaine specifically?

8 A Yes.

9 Q How do you say that if you say you were letting
10 Pete go out on his own?

11 A Because he wanted to and I didn't. My feelings
12 said no, you see. My feelings said no.

13 He said, "Well, gee, I know Arlene," this and
14 that.

15 Q But you were supplying cocaine to Pete for his
16 deals, is that correct?

17 MR. DiRENZO: Objection to the form of that
18 question, your Honor.

19 THE COURT: Why?

20 MR. DiRENZO: Then, if your Honor please, I
21 would ask your Honor to inform him of his constitutional
22 rights at this particular point.

23 The only transaction that we are concerned with is
24 this particular transaction.

25 THE COURT: I assume he is referring to this

1 lh:mg

2 transaction --

3 MR. DiRENZO: Not the way he put the question,
4 your Honor.

5 THE COURT: It will be confined to this transac-
6 tion.

7 Q You did state that you gave Hiram Montanez co-
8 caine, is that not so?

9 A Yes.

10 Q Is that within a few days of the June 7th meet-
11 ing?

12 A Yes.

13 Q Did you know that Hiram Montanez was going to
14 sell that cocaine to Joe?

15 A The eighth I didn't know. The eighth I didn't
16 know about.

17 Q The kilogram you did know about?

18 A Yes.

19 Q You knew he was going to sell that to Joe?

20 A Yes.

21 Q In the situation of the eighth, was it customary
22 for you to give Pete cocaine and not know who he was going
23 to sell it to?

24 A What do you mean, customary?

25 MR. DiRENZO: That's objected to. Hold it.

1
2 THE COURT: Sustained.

3 Q You testified at the time you pleaded, Mr.
4 Santiago, if I may read to you and see if you remember making
5 this statement, the Court, referring to pages 10 and 11 of
6 the transcript of your plea of guilty, the Court asked you
7 to describe what you did.

8 "A Well, your Honor, Hiram Montanez came to me and
9 we talked and we went and met Arlene Carlton, you know,
10 and I gave Hiram Montanez a package.

11 "Q You what?

12 "A I gave Hiram Montanez the drugs.

13 "Q What drugs?

14 "A Cocaine.

15 "Q What happened?

16 "A And then Hiram Montanez proceeded to deliver the
17 package, and then the agents picked him up and picked me
18 up, and that was it."

19 Do you recall making that statement?

20 A Yes, sir.

21 THE COURT: That is on June 11?

22 MR. SALERNO: The date actually is not indicated
23 in the statement that Mr. Santiago is making, your Honor.

24 THE COURT: The date he was picked up was June 11
25 when he had the kilo of cocaine, isn't that correct? Where

1 lh:mg

2 is the officer, the last witness?

3 Isn't that correct?

4 MR. SALVEMINI: Yes, your Honor.

5 BY MR. SALERNO:

6 Q You did make that statement, is that correct?

7 A Yes, in front of Judge Motley, right.

8 Q The statement was true?

9 A Yes.

10 Q So you did give Pete drugs which you knew were
11 going to Joe, is that correct?

12 A Yes.

13 THE COURT: What part are you objecting to?

14 MR. DiRENZI: The plural.

15 Q A quantity of cocaine, if you will. I think that
16 was clearly implied by the answer.

17 THE COURT: It was a kilo, wasn't it?

18 THE WITNESS: Right. A kilo.

19 Q Had anything been told to you between the June
20 7th meeting and the time you gave Pete this kilo to change
21 your mind about Joe?

22 MR. DiRENZO: Objection to the form of that
23 question, your Honor.

24 THE COURT: Overruled.

25 MR. DiRENZO: I think the question is a little

1 bit difficult to understand.

2 THE COURT: Clarify it, Mr. Salerno.

3 Q Do you contend that after the June 7th meeting
4 you adhered to your feeling that Joe was untrustworthy?

5 A Yes.

6 Q Why then did you give Pete cocaine that you
7 supplied to sell to Joe?

8 A I just didn't feel that it was right. He kept
9 on insisting.

10 Q He kept insisting?

11 A Right. So I just let it go.

12 MR. SALERNO: No further questions, your Honor.

13 MR. DiRENZO: No further questions.

14 THE COURT: You may step down.

15 (Witness excused)

16 THE COURT: Any other witnesses?

17 MR. DiRENZO: I had intended to call one, but I
18 will not. I will rest on the testimony of the defendant.

19 THE COURT: Any rebuttal by the Government?

20 MR. SALERNO: No rebuttal, your Honor.

21 The Government rests and respectfully moves for
22 judgment.

23 MR. DiRENZO: The claimant rests, your Honor.
24 We submit that the Government should not obtain judgment
25

1 lh:mg

2 under these circumstances.

3 THE COURT: Mr. Salerno, assume that the car had
4 been used to transport the two men ten days before the ac-
5 tual consummation of the sale, would that make any differ-
6 ence?

7 MR. SALERNO: I shouldn't think so, your Honor,
8 because as I think your Honor--

9 THE COURT: Suppose it was seven days before?

10 You say the time nexus has no part at all to do
11 with it?

12 MR. SALERNO: If it can be shown that the subse-
13 quent sales resulted from that meeting and there was nothing
14 intervening that could be called an intervening cause of
15 the subsequent sales, then I think quite clearly it would
16 have to be held that that meeting to which the car was used
17 to transport the people was in furtherance of the narcotics
18 business and facilitated the sale.

19 I think it is very important that this was con-
20 ceded to be an overt act in furtherance of a conspiracy,
21 this meeting, and that the car was used in furtherance of
22 that, if you will.

23 MR. DiRENZO: If I may interject, your Honor,
24 it seemed a little bit significant to me, although I know
25 it is not required, but I have seen many indictments, read

1 many indictments, where there is a specific meeting at a
2 given time. Some reference in the overt acts is usually
3 made that two parties went to a certain point at a certain
4 time, very often they say they drove to a certain place.

5 You find a complete absence of this in the overt
6 acts in this indictment.

7 MR. SALERNO: On the contrary, your Honor, there
8 is specific reference to the June 7th meeting which was
9 elaborated upon by Mr. Vizcarrondo's question at the time.

10 THE COURT: No. It simply states that on or
11 about June 7 the defendants Arlene Carlton, Hiram Montanez
12 and Ivan Santiago had a conversation. That was the conver-
13 sation in the apartment.

14 Baldly stated, your position is that because
15 the car was used to transport the two defendants to the
16 scene of the conversation, that that was a facilitation of
17 the conversation and the sale which subsequently took place.

18 MR. SALERNO: That is correct. We think that
19 in particular the Pontiac case which is quite close to the
20 facts in this case and holds in our favor--

21 THE COURT: One of the cases--

22 MR. SALERNO: Pontiac, 83 F. Sup. at page 999 or
23 1000.

24 MR. DiRENZO: Is that Judge Rifkind's case?

2 THE COURT: One at a time.

3 We will take Judge Rifkind's case first.

4 I don't think on its facts it has any substantial
5 bearing on the issues in this case. There Judge Rifkind
6 found the Dodge was an instrumentality in a prearranged
7 scheme of transportation which wasnot compelled by reason
8 of the intervention of narcotics agents.

9 Also I think it is appropriate to note, and I
10 quite agree with the statement made by Judge Rifkind, where
11 the contraband is not in the vehicle or in the possession
12 of the occupant of the vehicle, what constitutes facilitation
13 is a question of degree, which is in turn a question of
14 fact not readily susceptible to generalization.

15 It is simply another way of stating that each
16 case must stand on its own facts.

17 MR. SALERNO: I can't dispute that, your Honor.
18 I believe we quoted that identical language.

19 MR. DiRENZO: There is also other interesting
20 language, even in Judge Rifkind's decision, if your Honor
21 pleases. Careful reading of that case indicates that he had
22 had I believe only one reported case brought to his atten-
23 tion at the time thathe made his decision in that particular
24 case.

25 This other language was quite interesting, and

your Honor read part of it in mentioning Judge Rifkind's decision.

The following recital by the Court in making the finding of facilitation, your Honor, and this is a quote, he says, Judge Rifkind: "...was prompted by the inescapable inference which must be brought from the fact that the meeting in the Dodge and the Pontiac was not incidental, but prearranged; in other words, the Dodge was" and I am quoting your language as you read it "an instrumentality in a prearranged scheme of transportation which was not completed by reason of the intervention of the narcotics agents."

MR. SALERNO: Your Honor, here we have a further admission that Mr. Santiago in his testimony, at the time he got into the Cadillac, to go to Carlton's apartment, he knew that he was going to be talking about cocaine.

THE COURT: What it comes down to is a means of conveyance for him. He could just have readily taken a taxicab and could just have readily walked there, and the transaction would have gone on in the same manner. It didn't make any difference how he got there.

MR. SALERNO: That's true.

THE COURT: The conversation would have taken place, the transaction would have taken place and the eventual sale would have taken place in the same way.

2 MR. SALERNO: That's true, your Honor. But
3 the statute envisions that when in fact a conveyance is
4 used, we submit in the manner that it was used here, that
5 it is forfeitable.

6 The same could be said about the transportation
7 of narcotics itself. It could be said that he could have
8 gotten on the subway --

9 THE COURT: Am I correct that you disagree with
10 the statement in the New Hampshire case that to be for-
11 feited, the Supreme Court must have had some substantial
12 connection to or be instrumental in the commission of the
13 underlying activity which the statute seeks to prevent?

14 MR. SALERNO: I don't think I disagree with that
15 language. What I do disagree with is a suggestion that
16 is admittedly in some cases, there is a Buick case, I
17 think, in Pennsylvania, that suggests a car is used to
18 facilitate only if it could not have been done in any other
19 way.

20 That is the implication of the hypothetical that
21 your Honor was presenting me with.

22 If it is essential that this particular car and
23 no other means of transportation be used -- I submit that
24 argument could be applied to the actual transportation of
25 illicit narcotics -- one could always say they could have

2 used another means.

3 I think what the statute intends is that when
4 in fact the automobile is used in a particular way regard-
5 less of whether or not they could have gone by subway or
6 any other means, that there is a facilitation.

7 THE COURT: Don't you think the vehicle must have
8 played some part itself in the furtherance of the transac-
9 tion other than the mere means of transportation?

10 MR. SALERNO: We don't think it is mere means,
11 your Honor. We think they drove the Cadillac down there
12 by his own testimony knowing that he was going to talk about
13 narcotics.

14 We submit that's in furtherance of his narcotics
15 trafficking business.

16 The statute now reads, as I point out in our mem-
17 orandum of law, somewhat more broadly than it originally
18 did, that a conveyance used in any manner to facilitate
19 the sale and a conveyance that's used or intended for use--

20 THE COURT: But then you are factually up against
21 the proposition that as far as intended to be used, the
22 very discussion of the participants in the transaction was
23 to avoid the use of anything except two rented cars, which
24 excludes this car immediately, or to conclude the transac-
25 tion in an apartment.

2 MR. SALERNO: We recognize, your Honor, that
3 there is no evidence here of an intent to use the car for
4 the actual transportation.

5 The offer of proof that we made was in fact--
6 in the robing room, was intended to convey that there may
7 be a deliberate attempt to do precisely the opposite, to
8 use this car for a particular purpose, the showy purpose,
9 as it were, and to use cheaper cars for the actual trans-
10 portation.

11 THE COURT: That is so speculative I would not
12 accept that at all.

13 MR. SALERNO: We think it is significant that
14 in the Pontiac case the District Court referred to pre-
15 cisely such a possibility. I don't know whether it was
16 in the record--

17 THE COURT: I will take the matter under advise-
18 ment.

19 If you want to submit any other brief you may
20 do so by tomorrow afternoon.

21 MR. DiRENZO: I think I will rely on the memo
22 that I submitted to your Honor because it covers exactly
23 the same cases and a couple more.

24 (Court adjourned)

25 ...

WITNESS INDEX

84

<u>Name</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
Joseph P. Salvemini	10	35		
Ivan Santiago	64	70		

EXHIBIT INDEX

<u>Plaintiff</u>	<u>Identification</u>	<u>In Evidence</u>
1,2		10

I (We) hereby certify that the foregoing
is a true and accurate report to the best
of my (our) skill and of my (our) notes of this proceeding.

Laurence H. Kennefeld

Official Court Reporter
U. S. District Court

BEST COPY AVAILABLE

DP:cf

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



UNITED STATES OF AMERICA,

INDICTMENT

74 Cr.

71 CRIM. 628

-v-

ARLENE CARLTON,
HIRAM MONTANEZ a/k/a "Pete" and
IVAN SANTIAGO,

Defendant s.

The Grand Jury charges:

1. From on or about the 1st day of January, 1974
and continuously thereafter up to and including the date of
the filing of this indictment, in the Southern District of
New York,

ARLENE CARLTON,
HIRAM MONTANEZ a/k/a "Pete" and
IVAN SANTIAGO

the defendants and others to the Grand Jury unknown, unlaw-
fully, intentionally and knowingly combined, conspired, confederate
and agreed together and with each other to violate Sections 812,
841(a)(1) and 841(b)(1)(A) of Title 21, United States Code.

2. It was part of said conspiracy that the said
defendants unlawfully, intentionally and knowingly would distribute
and possess with intent to distribute Schedule
narcotic drug controlled substances the exact amount thereof
being to the Grand Jury unknown in violation of Sections 812,
841(a)(1) and 841(b)(1)(A) of Title 21, United States Code.

EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.

OVERT ACTS

In pursuance of the said conspiracy and to effect the objects thereof, the following overt acts were committed in the Southern District of New York.

1. On or about June 6, 1974 the defendant ARLENE CARLTON introduced a man to the defendant HIRAM MONTANEZ a/k/a "Pete".
2. On or about June 7, 1974 the defendants ARLENE CARLTON, HIRAM MONTANEZ and IVAN SANTIAGO had a conversation.
3. On or about June 10, 1974 the defendant HIRAM MONTANEZ a/k/a "Pete" delivered a package containing approximately 1/8th kilogram of cocaine at 305 East 24th Street, Apartment 19C, New York, N. Y.
4. On or about June 10, 1974 the defendant HIRAM MONTANEZ a/k/a "Pete" received approximately \$4,000.
5. On or about June 11, 1974 the defendant HIRAM MONTANEZ a/k/a "Pete" drove an automobile from the vicinity of Walton Ave., Bronx, N. Y. to 138th Street and Madison Avenue, New York, N. Y.

(Title 21, United States Code, Section 846.)

A 113

DP:cf

SECOND COUNT

The Grand Jury further charges:

On or about the 10th day of June, 1974

in the Southern District of New York,

ARLENE CARLTON,
HIRAM MONTANEZ a/k/a "Pete" and
IVAN SANTIAGO

the defendants, unlawfully, wilfully and knowingly did
distribute and possess with intent to distribute a
Schedule II narcotic drug controlled substance, to wit,
approximately 1/8th kilogram of cocaine.

(Title 21, United States Code, Sections 812,
841(a)(1) and 841(b)(1)(A).)

DP:cf

A 115

FOURTH COUNT

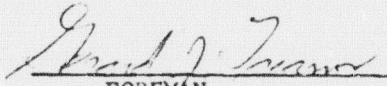
The Grand Jury further charges:

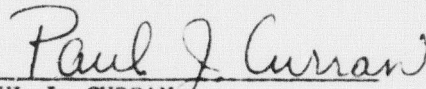
On or about the 11th day of June, 1974
in the Southern District of New York,

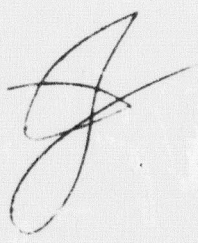
IVAN SANTIAGO

the defendant , unlawfully, wilfully and knowingly did
~~knowingly~~ possess with intent to distribute a
Schedule II narcotic drug controlled substance, to wit,
approximately 1 kilogram of cocaine.

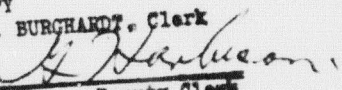
(Title 21, United States Code, Sections 812,
841(a)(1) and 841(b)(1)(A).)


FOREMAN


PAUL J. CURRAN
United States Attorney

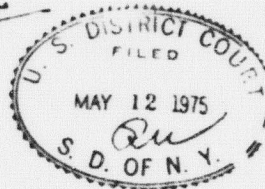


A TRUE COPY
RAYMOND F. BURGHARDT, Clerk

By 
Deputy Clerk

A 116
MONTANEZ

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



UNITED STATES OF AMERICA,)
Plaintiff,)
v.)
HIRAM MONTANEZ)
Defendant.)

No. *74* Crim. *623*
PETITION TO ENTER
PLEA OF GUILTY
(Fed. R. Cr. Proc.,
Rules 10 and 11)

The defendant above named respectfully represents to the court as follows:

(1) My full true name is: *HIRAM MONTANEZ*

and I request that all proceedings against me be had in the name which I here declare to be my true name.

(2) I am represented by counsel and the name of my attorney is: *SIOBY G. SPARROW*

(3) I have received a copy of the indictment (information) before being called upon to plead, and have read and discussed it with my attorney, and believe and feel that I understand every accusation made against me in this case.

(4) I have told my attorney the facts and surrounding circumstances as known to me concerning the matters mentioned in the indictment (information), and believe and feel that my attorney is fully informed as to all such matters. My attorney has since informed me, and has counselled and advised with me, as to the nature and cause of every accusation against me, and as to any possible defenses I might have in this case.

(5) My attorney has advised me that the punishment which the law provides, is as follows: A maximum of 15 years imprisonment (and a minimum of 0 years imprisonment) and a fine of \$25000 for the offense charged in (Count I of the indictment (information):

also that probation may or may not be granted; and that if I plead "GUILTY" to more than one offense, the court may order the sentence to be served consecutively, one after another.

(6) I understand that I may, if I so choose, plead "Not Guilty" to any offense charged against me, and that if I choose to plead "Not Guilty" the Constitution guarantees me: (a) the right to a speedy and public trial by jury; (b) the right to see and hear all witnesses against me; (c) the right to use the power and process of the court to compel the production of any evidence, including the attendance of any witnesses, in my favor; and (d) the right to have the assistance of counsel in my defense at all stages of the proceedings.

(7) I also understand that if I plead "GUILTY" the court may impose the same punishment as if I had pleaded "Not Guilty", stood trial and been convicted by a jury.

(8) I declare that no officer or agent of any branch of government (Federal, State or local), nor any other person has made any promise or suggestion of any kind to me, or within my knowledge to anyone else, that I would receive a lighter sentence, or probation, or any other form of leniency, if I would plead "GUILTY". I hope to receive probation, but am prepared to accept any punishment permitted by law which the court may see fit to impose.

(Fed. R. Crim. Proc., Rule 32(a)).

(9) I believe and feel that my attorney has done all that anyone could do to counsel and assist me, and that I now understand the proceedings in this case against me.

(10). I know the court will not accept a plea of "GUILTY" from anyone who claims to be innocent and, with that in mind and because I make no claim of innocence, I wish to plead "GUILTY", and respectfully request the court to accept my plea, as follows:

(*) *GUILTY AS CHARGED IN COUNT I*

(11) I declare that I offer my plea of "GUILTY" freely and voluntarily and of my own accord; also that my attorney has explained to me, and I feel and believe I understand, the statements set forth in the indictment (information), and in this petition, and in the "Certificate of Counsel" which is attached to this petition.

(12) I further state that I wish the court to omit and consider as waived by me all reading of the indictment (information) in open court, and all further proceedings upon my arraignment, and I pray the court to enter now my plea of "GUILTY" as set forth above in paragraph 10 of this petition, in reliance upon my statements made in this petition.

Signed by me in open court in the presence of my attorney
this 12 day of MAY, 1975.

Alfonso Montanez
Defendant

(*) The defendant's plea of "GUILTY" or "Not Guilty" as to each offense charged against him should be entered in the blank space provided in paragraph 10. If but a single offense is charged, the defendant who wishes to plead "GUILTY" should write in paragraph 10: "GUILTY" as charged in the indictment (information). If more than one offense be charged, the defendant may write in paragraph 10: "GUILTY" as charged in Count of the indictment (information), etc. "Not Guilty" as charged in Count , etc.

CERTIFICATE OF COUNSEL

The undersigned, as attorney and counsellor for the
defendant above named HIRAM MONTANEZ

hereby certifies as follows:

(1) I have read and fully explained to the defendant
all the accusations against the defendant which are set forth in
the indictment (information) in this case;

(2) To the best of my knowledge and belief each state-
ment set forth in the foregoing petition is in all respects
accurate and true;

(3) The plea of "GUILTY", as offered by the defendant
in paragraph 10 of the foregoing petition, accords with my under-
standing of the facts as related to me by the defendant, and is
consistent with my advice to the defendant;

(4) In my opinion the defendant's waiver of all read-
ing of the indictment (information) in open court, and of all
further proceedings upon arraignment as provided in Rule 10, is
voluntarily and understandingly made; and I recommend to the court
that the waiver be accepted by the court;

(5) In my opinion the plea of "GUILTY", as offered by
the defendant in paragraph 10 of the foregoing petition, is
voluntarily and understandingly made; and I recommend to the court
that the plea of "GUILTY" be now accepted and entered on behalf
of the defendant as requested in paragraph 10 of the foregoing
petition.

Signed by me in open court in the presence of the
defendant above named this 12 day of May 1975.

Admiral J. M. ...
Attorney for the Defendant

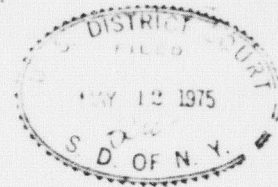
O R D E R

Good cause appearing therefor from the foregoing petition
of the defendant above named and the certificate of his counsel,
and from all proceedings heretofore had in this case, IT IS ORDERED
that the petition be granted and that the defendant's plea of
"GUILTY" be accepted and entered as prayed in the petition and as
recommended in the certificate of counsel.

Done in open court this 12 day of May 1975.

Constance Baker Motley
United States District Judge

A 119
IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



UNITED STATES OF AMERICA,

Plaintiff,

Ivan Santiago

Defendant.

No. *74* Crim. *623*

PETITION TO ENTER
PLEA OF GUILTY
(Fed. R. Cr. Proc.,
Rules 10 and 11)

The defendant above named respectfully represents to the Court as follows:

(1) My full true name is: *Ivan Santiago*

and I request that all proceedings against me be had in the name which I here declare to be my true name.

(2) I am represented by counsel and the name of my attorney is: *Michael T. Keene & H. Elliot*

(3) I have received a copy of the indictment (information) before being called upon to plead, and have read and discussed it with my attorney, and believe and feel that I understand every accusation made against me in this case.

(4) I have told my attorney the facts and surrounding circumstances as known to me concerning the matters mentioned in the indictment (information), and believe and feel that my attorney is fully informed as to all such matters. My attorney has since informed me, and has counseled and advised with me, as to the nature and cause of every accusation against me, and as to any possible defenses I might have in this case.

(5) My attorney has advised me that the punishment which the law provides, is as follows: A maximum of 11 years imprisonment (and a minimum of — years imprisonment) and a fine of \$ 25,000 for the offense charged in (Count 1 of the indictment (information);

also that probation may or may not be granted; and that if I plead "GUILTY" to more than one offense, the court may order the sentence to be served consecutively, one after another.

(6) I understand that I may, if I so choose, plead "Not Guilty" to any offense charged against me, and that if I choose to plead "Not Guilty" the Constitution guarantees me: (a) the right to a speedy and public trial by jury; (b) the right to see and hear all witnesses against me; (c) the right to use the power and process of the court to compel the production of any evidence, including the attendance of any witnesses, in my favor; and (d) the right to have the assistance of counsel in my defense at all stages of the proceedings.

(7) I also understand that if I plead "GUILTY" the court may impose the same punishment as if I had pleaded "Not Guilty", stood trial and been convicted by a jury.

(8) I declare that no officer or agent of any branch of government (Federal, State or local), nor any other person has made any promise or suggestion of any kind to me, or within my knowledge to anyone else, that I would receive a lighter sentence, or probation, or any other form of leniency, if I would plead "GUILTY". I hope to receive probation, but am prepared to accept any punishment permitted by law which the court may see fit to impose.

(Fed. R. Crim. Proc., Rule 32(a)).

(9) I believe and feel that my attorney has done all that anyone could do to counsel and assist me, and that I now understand the proceedings in this case against me.

(10). I know the court will not accept a plea of "GUILTY" from anyone who claims to be innocent and, with that in mind and because I make no claim of innocence, I wish to plead "GUILTY", and respectfully request the court to accept my plea, as follows:

(*) *ct 1 - Conspiracy*

(11) I declare that I offer my plea of "GUILTY" freely and voluntarily and of my own accord; also that my attorney has explained to me, and I feel and believe I understand, the statements set forth in the indictment (information), and in this petition, and in the "Certificate of Counsel" which is attached to this petition.

(12) I further state that I wish the court to omit and consider as waived by me all reading of the indictment (information) in open court, and all further proceedings upon my arraignment, and I pray the court to enter now my plea of "GUILTY" as set forth above in paragraph 10 of this petition, in reliance upon my statements made in this petition.

Signed by me in open court in the presence of my attorney
this 12th day of May, 1975.

Alvin Santiago
Defendant

(*) The defendant's plea of "GUILTY" or "Not Guilty" as to each offense charged against him should be entered in the blank space provided in paragraph 10. If but a single offense is charged, the defendant who wishes to plead "GUILTY" should write in paragraph 10: "GUILTY" as charged in the indictment (information). If more than one offense be charged, the defendant may write in paragraph 10: "GUILTY" as charged in Count _____ of the indictment (information), etc. "Not Guilty" as charged in Count _____, etc.

CERTIFICATE OF COUNSEL

The undersigned, as attorney and counsellor for the
defendant above named Ivan Santiago

hereby certifies as follows:

(1) I have read and fully explained to the defendant
all the accusations against the defendant which are set forth in
the indictment (information) in this case;

(2) To the best of my knowledge and belief each state-
ment set forth in the foregoing petition is in all respects
accurate and true;

(3) The plea of "GUILTY", as offered by the defendant
in paragraph 10 of the foregoing petition, accords with my under-
standing of the facts as related to me by the defendant, and is
consistent with my advice to the defendant;

(4) In my opinion the defendant's waiver of all read-
ing of the indictment (information) in open court, and of all
further proceedings upon arraignment as provided in Rule 10, is
voluntarily and understandingly made; and I recommend to the court
that the waiver be accepted by the court;

(5) In my opinion the plea of "GUILTY", as offered by
the defendant in paragraph 10 of the foregoing petition, is
voluntarily and understandingly made; and I recommend to the court
that the plea of "GUILTY" be now accepted and entered on behalf
of the defendant as requested in paragraph 10 of the foregoing
petition.

Signed by me in open court in the presence of the
defendant above named this 12th day of May 1975.

H. W. H. H. H.
/Attorney for the Defendant

O R D E R

Good cause appearing therefor from the foregoing petition
of the defendant above named and the certificate of his counsel,
and from all proceedings heretofore had in this case, IT IS ORDERED
that the petition be granted and that the defendant's plea of
"GUILTY" be accepted and entered as prayed in the petition and as
recommended in the certificate of counsel.

Done in open court this 12 day of May 1975.

Constance Baker Motley
United States District Judge

United States District Court
SOUTHERN DISTRICT OF NEW YORK

THE UNITED STATES OF AMERICA

vs.

ARLENE CARLTON,
HIRAM MONTANEZ a/k/a "Pete" and
IVAN SANTIAGO,

Defendants.

INDICTMENT

74 Cr.

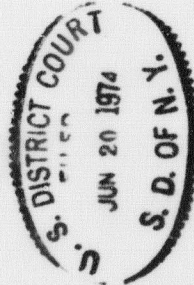
(2), USC §846, 841(a)(1) and
841(b)(1)(A).

PAUL J. CURRAN
United States Attorney

A TRUE BILL

Foreman

FPI-65-2-15-71-1000-0003



JUN 24 1974. *Deft summons appears*
(Atty H. P. Durango present) Deft
pleads n/g 10 days for motion. Car
assigned to Prothy J. Paul filed
by Court at \$10,000 Cash or surety
Deft remanded in lieu of Paul m.f.
Knapp J.

JUN 24 1974 *Def't Montanez appears*
(Atty H. Durango present) Def't pleads
n/g. Paul filed by Court at \$10,000
Cash or surety. Def't remanded in
lieu of Paul m.f.
Knapp J.

(OVER)

A 123 MONTANEZ
MAY 12 1975 DEFT (ATTY SIDNEY SPARROW PRESENT) ~~SANTIA~~
WITHDRAWS PLEA OF NOT GUILTY AND NOW PLEADS GUILTY
TO COUNT 1 OF THIS INDICT. SENT. ADJD. TO 6-12-75
11:30 AM P.S.I ORDERED BAIL CONT'D.

MAY 12 1975 DEFT (ATTY ELLIOTT WALES PRESENT) SANTIAGO WITHDRAWS
PLEA OF NOT GUILTY AND NOW PLEADS GUILTY TO
COUNT 1 OF THIS INDICT SENT ADJD. TO 6-12-75, 11:30 AM
P.S.I ORDERED BAIL CONT'D.

Matthy J.
(aw)

JUN 12 1975 DEFT (ATTY MICHAEL D. RENZO PRESENT) SANTIAGO,
SENTENCED AS A YOUNG ADULT OFFENDER, PURSUANT TO
5010 (A) OF TITLE 18, U.S.C. AS EXTENDED BY SEC. 4209
OF TITLE 18, U.S.C.

IMPOSITION OF SENTENCE IS SUSPENDED. DEFT. PLACED ON
PROBATION FOR A PERIOD OF 5 YRS, ^{ON COUNT 1} SUBJECT TO THE
STANDING PROBATION ORDER OF THIS COURT.

SPECIAL CONDITION OF PROBATION, DEFT TO MAKE SPECIAL
EFFORT TO OBTAIN HIGH SCHOOL EQUIV. DIPLOMA

~~OPEN~~ COUNTS DISMISSED ON MOTION OF DEFTS COUNSEL
WITH THE CONSENT OF THE GOVERNMENT. (RW)

DEFT (ATTY SIDNEY SPARROW PRESENT) MONTANEZ, SENTENCED
TO 5 YRS ^{ON COUNT 1} EXECUTION OF SENTENCE IS SUSPENDED.
DEFT PLACED ON PROBATION FOR 5 YRS, SUBJECT TO THE
STANDING PROBATION ORDER OF THIS COURT.

SPECIAL CONDITION OF PROBATION, DEFT GET A JOB
WITHIN 70 DAYS OR GO TO COLLEGE.

OPEN COUNTS DISMISSED ON MOTION OF DEFTS COUNSEL
WITH THE CONSENT OF THE GOVT.

Matthy J.
RW

BEST COPY AVAILABLE

JUL 1 1974

Deft Carlton Present (no atty) Court
 directs a plea of N/G be entered. 10
 days for motion. Refused to Motley, J.
 Ward, J.

AUG 12 1974

PRE-TRIAL CONFERENCE HELD. TRIAL DATE
 SET FOR NOVEMBER 12, AT 10 A.M. WITH
 POSSIBLE SUPPRESSION HEARING TO PRECEED TRIAL.

MOTLEY, J.

NOV 12 1974

Deft SANTIAGO) HEARING ON MOTION Filed

MOTLEY, J.

11/25/74 - HEARING ON MOTION TO SUPPRESS
 BEGAN AS TO Deft. SANTIAGO
 (ELLIOTT WALES OF COUNSEL)

11/26/74 - HEARING CONTINUED & CONCLUDED. DEC. 10

JAN 8 1975

Deft Carlton, no atty Stanley Siegel present -
 withdraws his plea of not guilty + pleads guilty
 to Count One (1) only. PSI ordered. Sentence
 February 19, 1975 at 4:30 - Rm 501 Present
 bail waived.

MOTLEY, J.
 RU

March 20, 1975 -

Sentence

Deft Carlton (atty Stanley Siegel present - sentenced to
 custody of atty Gault for a period of TWO (2) years on count 1, and on condit
 that Deft be confined in a JAIL type institution for a period of SIX (6) -
 Even if remainder of prison sentence suspended - probation 18 months. Plus +
 provisions of T-18, U.S. Code, Sect 841, a special parole term of 3 years is also
 imposed. Sentence is to run concurrently with sentence imposed + his day
 on Ind # 74C-876 by Judge Pierce. Count 2 is dismissed on motion of
 Deft's counsel with consent of Court.

Deft is Remanded

PIERCE, J.

RU

USA 536-479
(ED 4-23-71)

Plaintiff's

**EXHIBIT
U. S. DIST. COURT
S. D. OF N. Y.**

#2

f

United States District Court for

THE SOUTHERN DISTRICT OF NEW YORK

A 125

200

DOCKET NO. **74 Cr. 523**

IND PROBATION/COMMITMENT ORDER

Key for the government
person on this date

MONTH DAY YEAR
JUNE 12 1975

However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

MICHAEL P. RIMMO, JR.

(Name of counsel)

PLEA

☒ **GUILTY**, and the court being satisfied that there is a factual basis for the plea, ☐ **NOLO CONTENDERE**, ☐ **NOT GUILTY**

**FINDING &
JUDGMENT**

There being a finding/verdict of

☐ **NOT GUILTY**. Defendant is discharged.
☐ **GUILTY**.

Defendant has been convicted as charged of the offense(s) of **unlawfully, wilfully and knowingly combining, conspiring, confederating and agreeing with another to violate the Federal Securities laws.**
(Title XI, United States Code, Section 844.)

**SENTENCE
OR
PROBATION
ORDER**

as charged in count 1

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that:

The defendant is sentenced as a YOUNG ADULT OFFENDER, pursuant to 5010(a) of Title 18, United States Code, as extended by Section 4300 of Title 18, United States Code. IMPOSITION OF SENTENCE IS SUSPENDED, defendant is placed on probation for a period of FIVE (5) YEARS subject to the standing probation order of this Court.

**SPECIAL
CONDITIONS
OF
PROBATION**

Defendant make a special effort to obtain High School Equivalency Diploma. And enroll in some program leading to his qualifications such as carpenter, etc.

Open counts dismissed on motion of defendant's counsel with the consent of the Government.

**ADDITIONAL
CONDITIONS
OF
PROBATION**

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

**COMMITMENT
RECOMMEN-
DATION**

The court orders commitment to the custody of the Attorney General and recommends:

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

SIGNED BY

☒ U.S. District Judge

☐ U.S. Magistrate

CONFERENCE ROOM REPLY

Date **JUNE 12, 1975**

CERTIFIED AS A TRUE COPY ON

June 12, 1975

THIS DATE

[Signature]
CLERK
U.S. DISTRICT COURT

BEST COPY AVAILABLE

A 126

NO Fee

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

Plaintiff,

-v-

NOTICE OF APPEAL

ONE 1974 CADILLAC ELDORADO SEDAN,
SERIAL NO. 6L47S4Q407966,

Defendant.

74 Civ. 4508 (EW)

PLEASE TAKE NOTICE that the United States

America, plaintiff above named, hereby appeals to the
United States Court of Appeals for the Second Circuit from
the order and judgment of this Court denying forfeiture,
dismissing the complaint, and directing the United States
to release the defendant vehicle to the claimant, entered
in this action on March 4, 1976.

Dated: New York, New York

April 5, 1976

ROBERT B. FISKE, JR.
United States Attorney for the
Southern District of New York
Attorney for Plaintiff

By:

Peter C. Salerno
PETER C. SALERNO
Assistant United States Attorney
Office & P.O. Address:
U. S. Courthouse Annex
One St. Andrew's Plaza
New York, New York 10007
Telephone: 791-1979

TO:

MICHAEL P. DIRENZO, ESQ.
Attorney for Claimant Ivan Santiago
15 Columbus Circle
New York, New York 10023

CLERK, UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
United States Courthouse
Foley Square
New York, New York 10007

CYD+
40 DAY
ISSUED
4/5/76
20

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